5 Access to Learning Resources in Post-apartheid South Africa

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Any inquiry into how university students get the learning resources they need for their education in post-apartheid South Africa must deal with three interrelated subjects: the legacy of apartheid, which continues to structure educational opportunities in important ways more than twenty years after the first democratic election; the organization and increasingly radical transformation of the commercial publishing market, which has been the primary source of textbooks and other materials in the system; and—common to all of the chapters in this book—the mix of new-technology-enabled strategies through which students do their best to get the textbooks and other materials they need.

We track three decades of tensions around these issues, as post-apartheid leaders struggle to reform an educational system originally designed primarily to control and oppress rather than educate the majority population. Because the old system had grown up around numerous (and often colonially grounded) accommodations of the global publishing business, international copyright law, and—most important—a structural disregard for whether the system worked in more than a minimal sense, the pressure for reform has produced tensions on all of these fronts.

The end of apartheid began a process of reconnecting South African higher education to the international community and to a publishing environment that had selectively shunned the old regime. This process was shaped by the financial crisis of the South African state as well as by larger global crises. It involved students taking seriously the "right to education" enshrined in the constitution concurrently with the consolidation of the publishing and bookselling industries at home and abroad. Throughout, the new democratic government struggled to accommodate two distinct concepts of reform: the desire to restructure higher education to improve global competitiveness—a market-driven approach—on the one hand, and on the other a more developmental approach coupled with demands by student movements and radical academics for a more complete "decolonization" and Africanization of higher education.

During most of this period, the competitive, market-focused view of the university has prevailed, resulting in the steady reduction of government subsidies in spite of massive increases in student numbers. With public support diminishing, universities have been hard-pressed to seek alternative funding to meet student needs, while students are protesting, with increasing levels of violence, in favor of free higher education. This is, of course, consistent with broader trends in higher education worldwide. What sets the South African situation apart are the extremes of inequality and the concomitant levels of student poverty—both educational and financial—that have needed to be addressed in the wake of apartheid.

The role of shadow libraries in the South African context, during apartheid and after, has to be understood in the light of this dichotomy. On the one hand, extensive photocopying practices, including increasingly sophisticated pirated textbooks, have been the most common practice, rather than comprehensive digital sites. The demand for a decolonized curriculum, on the other hand, looks back to a tradition of subversive production of anti-apartheid content by radical student movements and "oppositional" publishers, as well as collaborative approaches to compiling resources. This was perceived as an "alternative curriculum" by anti-apartheid students who drew on a range of resources to compile their publications, while publishers tried to keep their publications out of the eye of the regime, often distributing them through informal networks.

Higher Education under Apartheid

The control of access to education and to different levels of knowledge was a central pillar of the apartheid state—a way of enforcing the subjugation and difference of the majority black population. This was not a simple matter of a binary divide between black and white, but a complex spatial and ideological mapping of race, class, and geography.

Most of the core practices of segregation in South Africa predated the consolidation of the apartheid state after World War II. Separate schools for white and black South Africans began to appear in the 1910s, after the creation of the Union of South Africa (Jansen 1990). Separate curricula dated from the mid-nineteenth century, with the education available to black South Africans oriented primarily around industrial training.

From these practices, the apartheid regime developed a much more thorough application of racial ideology to the structure of higher education. The resulting system was baroque in its complexity, using tribal identity and rural geography to enforce what the National Party government saw as a "natural" separation and hierarchy. With the passage of the Extension of Universities Act No. 45 in 1959, fully segregated higher

education became the law of the land.[1] Henceforth, it was a criminal offense for a "non-white" student to register at an "open" (i.e., white) university without the permission of the minister.

The 1959 Act reshaped the university system around this complex racial vision. Different institutions were created for the several recognized racial groups (white, colored or mixed race, Indian, and black) with different government departments responsible for each. A number of notionally "independent" tribal areas were also created—the so-called Bantustans—each with its own government and separate university system. Some racially segregated colleges were started de novo; others emerged from branches of the distance education provider, UNISA, which later grew into the largest provider of higher education in the country. Among the casualties of these policies were the handful of high-quality colleges that served black students, including the University of Fort Hare, founded by Scottish missionaries in 1916 as the South African Native College. The education Fore Hare offered was elite and Eurocentric—in Nelson Mandela's words, "For young black South Africans like myself, it was Oxford and Cambridge, Harvard and Yale, all rolled into one" (Mandela 1994, 7). It was not a large institution, yet by the time that the apartheid regime reclassified it as a Bantu tribal university, its alumni included a long list of African heads of government and future leaders of the apartheid struggle.[2]

White South Africans attended urban English or Afrikaans universities, perceived as liberal and conservative, respectively. The seven Afrikaans institutions were aligned with the apartheid regime and were authoritarian in their approach, seeing themselves as the providers of civil servants and professionals in the service of apartheid.

The four English universities regarded themselves as international institutions with a strong commitment to academic freedom. Blue-sky research was important and international donor funding helped insulate the institutions from some forms of government pressure. Below the top-tier institutions were fifteen "technikons" or polytechnic schools, divided into eight white institutions and seven black ones. These tended to have a more conservative and instrumentalist orientation than the universities.

For black South Africans, the primary aim of the apartheid education system was to maintain the rigid separation of class and power, in which the majority population served either as low-level workers in the economy or as apartheid civil servants.[3] These objectives were driven at the outset by the needs of the mining sector for a compliant migrant labor force.

Overall, the education system strove to replace individual identity with collective racial and tribal identities—a goal that predicated the location of black universities in remote rural areas. This separation was intensified by the underresourcing of these

universities, in spite of steady increases of student numbers, resulting in inadequate facilities, library resources, and underqualified teachers (Jansen 1990). Libraries tended to be stocked with unlicensed photocopies and students relied extensively on copied textbooks and compilations in the absence of a functional and affordable textbook supply chain.

In the apartheid era, the intellectual environment was severely constrained by restrictions on freedom of information, enforced through extensive censorship and a system of "bannings" of authors and works, imprisonment of offending authors, and, in some cases, assassination of activists. Geographic isolation and the poverty of the teaching and learning environment, among other factors, resulted in what Soudien (drawing on the theories of Sen and Ostrom) described as "a massive capability deprivation machine" (Soudien 2013, 57), in which education provided little basis for control over the future. As the newly democratic government set out in the 1990s to reverse the effects of apartheid on higher education, this physical, economic, and psychological deprivation has proved to be a lasting heritage.

Student Resistance and the Publishing Underground

Given the extent of repression in the educational sector during apartheid, it is not surprising that student and faculty resistance emerged as a countervailing force in the apartheid years. This radicalization intensified in the 1970s—the beginning of the end of apartheid. The South African Students Organization (SASO), led by Steve Biko, broke away from the predominantly white, liberal National Union of South African Students (NUSAS) to mobilize black university students against the regime. In the less-resourced black universities, this split aligned many students with the Black Consciousness movement, which promoted a radical break with both the service-oriented curricula imposed by the state and Eurocentric intellectual traditions. Biko was beaten to death by secret police in 1977, but the Black Consciousness student movement continued.

In 1976, around ten thousand high school students in the huge Soweto township outside Johannesburg took to the streets in protest, triggered by an attempt to enforce the teaching of key subjects in Afrikaans—considered the language of repression— rather than in English. When the students were attacked by heavily-armed riot police, the event became a national and international media event and a seminal moment in the anti-apartheid movement. In the protests that followed, hundreds were arrested or killed and a new phase of resistance and repression began, in which the killing, arrest, and torture of students became commonplace. The event proved a watershed for student radicalization across the country, with student protests playing a central role

in anti-apartheid activism and large numbers undertaking the risky journey to neighboring countries to join the African National Congress (ANC) (Hyslop 1988; Swilling 1988, 93).

The intellectual underpinnings of the regime also came under fire as a generation of academics argued for a more Afrocentric and class-centered basis for research and teaching. The illicit production and circulation of texts played a large role in this activism. SASO compiled and circulated a wide range of materials, including compilations drawing on Frantz Fanon and the Negritude tradition of Léopold Senghor and Aimé Césaire (and the writings of local Black Consciousness leaders like Biko and Barney Pityana. The smaller but better resourced movement in the white English-speaking universities adopted similar tactics, producing protest literature on their own printing presses and helping to build a radical intellectual alternative to apartheid discourse focused on the history of opposition to colonialism and apartheid, worker rights, and trade union development (Kell 1991; Hofmeyr 2013; Berger 2000; Moss 2014).

These student movements and academic oppositional presses confronted the intense censorship imposed by the apartheid government. The chief vehicles for this censorship were the Publications and Entertainment Act of 1963, which provided for the seizure of "undesirable" publications, and the Suppression of Communism Act of 1950, which prohibited quoting or publishing the work of those on a list of "banned" individuals. The publishing networks thus faced considerable threats of harassment, police violence, "banning orders" (which involving restrictions on movement, association, and communication), imprisonment, torture, and even death.[4]

A wide range of counter-strategies emerged to mitigate these risks while also maintaining the circulation of critical materials. These included the extensive use of informal publishing genres and distribution networks; the willingness of local radical publishers to defy the rules; and radical publishers and university presses in the UK and United States publishing South African works in exile. Banned publications then became objects of smuggling and reprinting through the student and academic networks.

For many student leaders, these underground publications operated as an alternative curriculum, delivered through student magazines and serialized publications and pamphlets. They provided students with access to knowledge relevant to the realities of South African life—something not available in more "neutral" international (or even local) publications and learning resources. Lectures and papers on the political situation and the history of the opposition reached large audiences. On one occasion, University of Witwatersrand students printed 100,000 copies of a protest pamphlet overnight for Soweto student protesters (Moss 2014). These activities aligned with the rise of an alternative radical scholarship that began to be absorbed into the

curriculum in the 1980s and 1990s as these students moved on to become faculty members.

Throughout this period, local university presses played a relatively small role in this process. Most were cautious or, in some cases, politically conservative. A small group of independent publishers, however, had closer connections to student radicals and gave voice to academic opposition to the apartheid order. The publishers David Philip, Ravan Press, Skotaville, Taurus, and Ad Donker specialized in radical and anti-apartheid writing and scholarship—subjects whose publication could invite raids and confiscation of stock by the police and banning orders amounting to home imprisonment for publishers (Philip 1991; Evans and Seeber 2000).[5] Early versions of digital typesetting were used in house by Ravan Press and Taurus to prevent linotype compositors from warning the police about "deviant" books in production.

These informal and formal publications effectively made up a shadow library of a different kind, in varying degrees defying copyright conventions and censorship to advance a decolonized curriculum. The impact is epitomized by an anecdote from a former staffer at Ravan Press, who described a street vendor selling Ravan Press's radical *Staffrider* magazine by standing on a corner in Soweto, holding the publication aloft, and shouting "Knowledge! Knowledge!"[6]

The Anti-apartheid Academic Boycott and the Rise of a Copying Culture

Photocopying was the basis of the other form of shadow library common in South African higher education. Whole books and extracts were widely copied in the face of inefficient supply lines and the unavailability of required reading because of censorship. This tendency was further fueled by the international academic boycott of South African universities, which had been launched by British academics in 1957 at the request of the ANC (Haricombe and Lancaster 1995, 31). The boycott movement expanded slowly in the academic community in the next two decades, only gaining widespread political support in the 1980s with the passage of the Anti-Apartheid Act in the United States in 1986. After its enactment, a number of U.S. publishers withdrew textbooks and scholarly publications from the South African market (ibid., 43). However, this strategy was not universally accepted. The Association of American University Presses (AAUP) and the Association of American Publishers (AAP), for example, rejected the boycott, characterizing access to information as a force for change.

The boycott did not have a large impact on the general book trade, but the tertiary and scientific departments of booksellers felt the effects markedly (Philip 1991, 18). Some publishers, like McGraw Hill, pulled out of the country altogether in response

to U.S. trade sanctions, selling its local list to Lexicon Publishers. Haricombe and Lancaster, discussing a survey of faculty, reported that 49 percent of their sample complained of the lack of access to textbooks or journal subscriptions or both (Haricombe and Lancaster 1995, 44; Gray 2000, 176). The book boycott was clearly a factor, but not the only one: financial sanctions and a weak exchange rate "doubled or even trebled the prices of books and journals from abroad. … Required textbooks priced themselves out of the student market. As a result, the university library sometimes became a textbook repository, and students copied the required sections from the textbooks" (Haricombe and Lancaster 1995, 89).

The combination of the boycott, local censorship, and—throughout the 1970s and 1980s—the introduction of affordable photocopy machines, combined with inefficient distribution networks, produced a steady rise in the role of photocopied coursepacks. Later, as copy machines became more efficient, there was wide-scale copying of textbooks by copy shops and temporary commercial operations set up at the start of the academic year in shipping containers close to campuses, particularly those situated outside the main cities, where distribution was problematic.

In this environment, photocopies became the dominant form of classroom material in many settings, especially in the rural black universities, where published materials were scarce. In the better-resourced universities, photocopied coursepacks included extracts from textbooks as well as radical local publications. This set of practical workarounds against censorship, the boycott, high costs, and inadequate distribution systems became one of the major forms of curricular continuity between the apartheid and post-apartheid periods.

Post-apartheid Higher Education Policy

The announcement of the end of apartheid came suddenly and, to most South Africans, unexpectedly, in a speech by President F. W. de Klerk in February 1990, which lifted the ban on the African National Congress, announced the release of Nelson Mandela from prison, and opened the way for negotiations for democratic elections. General elections, with full enfranchisement of black South Africans, took place four years later, resulting in a major victory by the ANC.

Higher education policy development at this stage grappled with two distinct—though often intertwining and sometimes contradictory—challenges. The first was a development agenda aimed at reversing the damage done by apartheid and realigning the curriculum to address the needs of the country and its disenfranchised community. The second challenge aimed at regaining international recognition for South

African higher education, with an emphasis on international competitiveness and prestige.

Some of the challenges facing post-apartheid higher education were widely understood. The new education policy would have to accommodate very rapid growth in the number of black students, nearly all of whom suffered from serious economic and educational disadvantages in the wake of apartheid policies and in a country with one of the highest income gaps in the world. Many of the large numbers of new students entering university would not be able to afford fees, accommodation, textbooks, or digital learning aids. Also needed was the transformation of the racial profile of the faculty, which, following the division of educational opportunity under apartheid, was overwhelmingly made up of the minority white population. And policy would have to include changes in curriculum design to better reflect national development concerns and the cultural politics of the new South Africa (Gray 2000; Bunting 2002; Jansen 2003).

The Right of Access to a Locally Relevant Education: Aspirations and Realities

Many of these ambitions drew on the liberation rhetoric of the ANC, which focused on education as a human right. The Freedom Charter, an important 1955 manifesto adopted by the Congress movement[7] early in the apartheid period, states under the heading *The Doors of Learning and Culture Shall Be Opened*: "Education shall be free, compulsory, universal and equal for all children; Higher education and technical training shall be opened to all by means of state allowances and scholarships awarded on the basis of merit."[8]

In 1996, the new South African Constitution granted the right to a free basic education and an opportunity for "further education, which the state, through reasonable measures, must make progressively available and accessible."[9] Thus, although access to university education was not given the compulsory, free-of-charge status that school education was, the policy documents of the ANC and the new democratic government made democratic access a key goal, initially supported by student loans and bursaries. A National Student Financial Aid Scheme (NSFAS) was established in 1997, expanded in 1999, and has grown rapidly since. By 2017, 175,000 students received NSFAS funding.

Many universities took up the need for access and student success through the provision of academic support programs designed to address the "inadequate articulation between the secondary/further education system and higher education in its existing forms" (Soudien 2013, 62, 64). Multilingualism was encouraged through a number of programs and policies, such as the use of Sepedi at the University of Limpopo and the

introduction of compulsory Zulu at the University of Kwa-Zulu Natal. These efforts were broadly aligned with the ANC push for a more Afrocentric curriculum, in line with the liberation vision articulated by the radical student movements, academics, and publishers of the 1970s and 1980s.

National Education Policy—A Divided Agenda

The implementation of post-apartheid higher education reform started in earnest with the National Commission on Higher Education, whose 1996 report and 1997 white paper outlined the proposed transformation of the system, from changing student and faculty composition to reforming curricular and research agendas (Badat 2009). At this stage, policies favored institutional autonomy. The result was an uneven state of transformation and institutional development, complicated by migration of students to the metropolitan, historically white universities. The black universities created by apartheid fared especially poorly under this model, with "financial deficits, high failure rates, managerial ineffectiveness and poor students unable to pay for higher education"—all worsening as additional funding for redress did not materialize (Jansen 2003, 305).

With the National Plan for Higher Education in 2001, the government adopted a much more interventionist approach. The plan identified a need for more accommodation of the multilingual student population, in which the majority of students spoke English as a second, third, or even fourth language. It argued for adoption of a locally appropriate and Afrocentric curriculum, with more locally produced materials and capacity to adapt international content to local case studies and African perspectives (Soudien 2013, 55). In the language of the National Plan: fields of study would need to include "African languages and culture, African literature (and not only in its English form), indigenous knowledge systems, and, more generally, the transformation of curricula to reflect the location of knowledge in the context of the African continent" (DHET 2001, 27).

The major pressure against this agenda came from economic liberalization policies, negotiated by the ANC in parallel with the more public deliberations on the post-apartheid future of the country. Most directly, the financial requirements of the transformation agenda were inconsistent with the budgetary discipline needed to tie South Africa to the WTO, the IMF, and the World Bank, including the commitment by the Mbeki government to repay the apartheid government's national debt (Cloete and Gillwald 2014). More generally, it was inconsistent with pressure to reframe South African higher education around the market-driven goal of greater competiveness in international higher education.

As Badat observed, the different values and goals that interest groups assigned to higher education led to contestation:

These could include social equity and redress on the one hand, quality on the other. Focusing on transformation at the expense of quality could compromise the production of graduates with the necessary skills for national economic development. Competing in the process were questions of national redistributive reconstruction and global competitiveness, a debate in which questions of differentiation become important. (Badat 2009, 461–462)

In the university sector, these pressures exchanged the vision of generous government support for higher education, as articulated in the Freedom Charter and Constitution, for a more market-driven and commercialized model. Despite the booming student population, government subsidies in real terms decreased as a component of total university income, from 49 percent to 40 percent while the contribution from student fees, in turn, rose from 24 percent to 31 percent (CHE 2015, 95). Universities were encouraged to seek "third-stream funding" from corporate partnerships and other university-supported commercial activity, including catering to the still-powerful mining sector.

In contrast to the highly segmented system under apartheid and also to post-apartheid proposals to recognize the different roles played by different types of institutions, post-apartheid higher education policy consolidated around a vision of a relatively undifferentiated institutional landscape.

At the same time, as part of the targets built into higher education policy, the higher education system has seen continuous pressure to bring the demographics of students and staff into line with national profiles. There has been a rapid and substantial increase of black students, although white students remain overrepresented in the elite institutions and the rural black universities remain overwhelmingly black. As a result of the rapid increases in black students, the student population doubled between 1994 and 2015, from under half a million to just over a million (HESA 2014; DHET 2015).[11]

Efforts to transform the demographics of faculty, particularly at the elite levels, have been less than successful. Black faculty, and particularly black women, remain underrepresented, especially at the professorial level. This is also reflected in the production of classroom materials, with authorship of locally published textbooks by black authors standing at only 22.6 percent in 2012 (PASA 2013).

Within this ecosystem, the distance education university UNISA has emerged as the dominant institution in terms of student numbers, with 400,000 students in 2015. The next-largest institution has 74,000 students.[12] UNISA thus has considerable influence on the textbook market, both in terms of the books published and the threats that it

can pose for the local industry in relation to the development of digital materials and open education resources.

Completion Rates

The expansion of the student population in the sector took place against a background of financial distress and poor preparation of students in schools, which resulted in high dropout rates (Cloete and Gillwald 2014). Secondary schooling remained sharply divided, with high-performing schools in formerly white middle-class areas attracting the learners more likely to succeed and the poorer schools in black townships and rural areas remaining underresourced in terms of infrastructure, libraries, and teaching skills.

As a result, low completion or "throughput" rates at UNISA and other institutions became a major concern for post-apartheid educational planning. The National Plan for Higher Education (DHET 2001) aimed at the throughput rate of 75 percent for the completion of undergraduate degrees in three years, achievable in part through greater investment in remedial education and corresponding "bridging" materials designed to ease the transition to higher education.

By 2011, however, throughput within three years averaged 25 percent for face-to-face courses and 15 percent for distance education, with UNISA achieving a throughput rate of only 7 percent (DHET 2012, 11). Put differently, of all students enrolled in three-year degrees in 2006, only 53 percent graduated within five years, with an extra estimated 41 percent dropping out completely.

This lack of articulation between high schools and universities remains a profound problem that affects all students. In the international competitiveness rankings for education, South Africa ranks very low. Particularly in language and mathematics, students coming through the secondary school system demonstrated serious deficits in basic knowledge, especially with regard to university expectations.

Throughput rates this poor pose serious challenges for the provision of learning materials. With dropout rates this high, the argument that a good textbook would ensure academic success is unlikely to apply on its own: the failure is clearly deeper and more endemic. This has meant that higher education institutions have needed to develop high levels of expertise in understanding the complex reasons for dropouts and the pedagogical and social approaches that can help address the problem.

The inability of the education system to manage linguistic diversity further depresses these statistics. There are eleven official languages in South Africa, yet education beyond elementary school level and in higher education takes place in English and Afrikaans. A high proportion of students, therefore, study in their second, third, or fourth languages.

Locally published university textbooks are also overwhelmingly in English, with a few Afrikaans titles and nothing at all in the other nine official languages.

This gap between plans for transformation of the system and the laissez-faire reality has had a variety of implications for scholarly and academic textbook production. The post-apartheid transformation agenda called for a locally relevant African vision of research and research publication, yet textbooks published by the major U.S. and UK publishers seldom had any references to Africa. South African textbooks were often favored for this reason, but as another legacy of apartheid and the neocolonial trading environment, these rarely discussed the regional environment (although this is changing as publishers move to more flexible digital delivery methods that allow for localization and customization). The creation of appropriate bridging materials to help deal with underprepared students was, with a few exceptions, avoided by local publishers and left to universities to develop themselves.

The Academic Publishing Sector in a Period of Change

The dominant story of textbook publishing in the English-speaking world in the second half of the twentieth century was one of consolidation, as educational publishers were bought up, merged with, or driven out of business by a shrinking number of multinational conglomerates. By 1996, the seven largest college textbook companies accounted for two-thirds of the global market (Worth 1996). By 2014, three companies—Pearson, McGraw-Hill, and Houghton Mifflin Harcourt—controlled more than half the market.

In South Africa, this process was delayed by the rise to power of the apartheid government after World War II. The process of internationalization experienced in much of the rest of the world was matched by increasing parochialism at home. Where conglomerates did arise, they did so primarily on the basis of locally owned enterprises. The apartheid government was an active supporter of Afrikaner business and encouraged the creation of powerful national corporations, particularly in the media industries. Nasionale Pers (or Naspers, as it is more commonly known); Perskor, which had close links to Verwoerd; and De Jager HAUM, a right-wing press with church connections, were all able to gain dominant positions in the elementary and high school publishing market, building on their lucrative relationships with government (Mpe and Seeber 2000, 19–20; Badat 1991).

The academic textbook market was—and post-apartheid, remains—a much smaller industry sector than trade or schools publishing, characterized by lower profits and considerable participation by overseas publishers. By the end of the apartheid period,

more than 65 percent of academic textbook sales were estimated to be in the hands of international publishers. At that stage, these companies included Pearson, Hodder Headline, Wiley, Heinemann, McGraw Hill, Macmillan, and Butterworths, among others.

The largest of the local players in the academic market was Juta, a legal and academic publishing and bookselling company founded in 1853 by Jan Carel Juta, who happened to be married to Karl Marx's sister. Juta's entry into academic publishing came in 1857 when he won the right to supply reference books to the examining board of the University of Good Hope (the precursor to the University of Cape Town). The company ultimately grew into a solid school and university educational publisher and bookseller, alongside its legal business.[13]

The other dominant local academic textbook publisher was Van Schaik, which was founded as a privately owned bookseller in 1914, moved into trade publishing, and began to develop its academic textbook business in the 1960s. The company was taken over by in 1986 by Naspers—a rapidly-expanding conglomerate supportive of the government in the apartheid years—and became a higher education-focused business.[14] Companies like Longman and Oxford University Press, which had a local office, published some academic works but focused predominantly on the primary and secondary schools market.

An unusual facet of the South African higher education textbook market was the dominance of large distance education institutions—UNISA and TechnikonSA—which later merged into one institution. Created as an examining body in 1873 and expanding to correspondence course delivery in 1946, UNISA was granted dominant status as a distance education provider by the apartheid government in 1959. Ultimately, it grew into the largest university in South Africa by a wide margin, becoming one of the bigger distance education providers in the world.[15]

The draw of UNISA and Technikon SA for academic textbook publishers was their large first-year classes and potential for direct supply—bypassing booksellers to achieve higher levels of sell-through and bigger margins. Local publishers, who were otherwise vulnerable to small market size and tenuous profitability, gravitated toward subjects where local case studies were important and distance classes were large—particularly in areas such as commerce, marketing, business studies, and communications. In practice, however, the geographical remoteness of the rural "black" universities and absence of local bookshops resulted in a very weak supply chain for these institutions, leading—as we will see in more detail—to a wide array of informal copying practices organized by students and faculty, and resulting publisher complaints.

Post-apartheid Market Consolidation

The toxicity of the apartheid regime afforded South African publishers a certain degree of insulation from multinational pressure. South African publishers were not attractive targets for takeover in an era of academic boycotts and government censorship, nor did many international companies seek to set up local publishing operations.

This changed with the end of apartheid: some South African publishing and bookselling industries had consolidated in the apartheid years into large media holding companies, such as the local conglomerate, Nasionale Pers, which has a wide range of media, publishing, electronic, telecommunications, and broadcasting interests—including in China, where it owns the large instant messaging business Tencent. Naspers is now one of the biggest global multinationals. Other companies experienced a roller-coaster ride as national and international corporations invested and disinvested in different segments of the industry. Juta, the family-owned educational, academic, law, and professional publisher and bookseller, withdrew from higher education publishing, later sold off its school textbook division after incurring losses in the new curriculum, and, in 2013, scaled back and then sold its bookselling business to Protea booksellers.

Trade bookshops underwent a parallel process of consolidation. Specialty independent bookshops faced increasing competition from expanding shopping mall trade book chains, which focused on the popular mass-market end of the international market and tended to favor international bestsellers, often consigning South African books to the back shelves of the store.

The Demise of the Radical Publishers

In this changing context, the independent anti-apartheid publishers established in the apartheid period, such as Ravan Press, Ad Donker, and David Philip, saw sales fall off as their outlets narrowed and then largely disappeared. A watershed moment came in the late 1980s, when de Jongh's Bookshop, near Wits University, closed its doors when its owner returned to the Netherlands. This was the last bookshop in the country that specialized in both international and local intellectual trends.

The mainstream university textbook booksellers, by that stage, had largely limited their stockholding to high-volume undergraduate textbooks—further undermining the distribution of more specialized and localized learning resources. Together, these developments effectively killed off the market for "recommended reading" prescribed for students, substantially reducing the sales levels of South African-focused social science and humanities books. Today, only a handful of bookshops—like Clarke's Bookshop in

Cape Town and Thorold's in Johannesburg, which are also second-hand and antiquarian bookshops—widely stock the kinds of books on South Africa and the rest of the continent that were published by the anti-apartheid radical publishers.

The Rise of the International Mega-textbook

By the end of the apartheid era, the nature of the "product" had also changed in ways that reflected wider patterns of consolidation. Increasingly, the market was shaped by the rise of international mega-textbooks, characterized by extreme length (800–1,400 pages), authoritative tone, high production values, color illustrations, and multimedia support packages for lecturers. This became the aspirational standard for local publishers and, indeed, for lecturers who pushed for adoption of the new "global" textbooks as a form of competitive alignment with international standards of teaching and learning. As in other countries, the marketing of these mega-textbooks focused primarily on the lecturer delivering the course, not on the students, creating markets in which price sensitivity could not be easily expressed.

These developments presented a problem for local publishers, who typically had lower profit margins than their international counterparts, but also little or no ability to amortize investment across large export markets. They could not afford, in most cases, to compete with the mega-textbook—with its international prestige, extreme length, color printing, and multimedia enticements.[16] The new model also produced steep price increases: between 1980 and 1992, textbook prices increased by 250 percent in the United States, compared with a 70 percent increase in the consumer price index (Worth 1996). These costs were passed on in international markets like South Africa, ensuring low classroom adoption, with adoptions excluding poorer students. This mismatch, in turn, encouraged sharing, photocopying, and other strategies designed to mitigate the cost.

Supply Chain Problems

The stockholding habits of bookshops also changed as they absorbed the profit-maximizing strategies of the global chains (Horvath 1996). In order to lower the risk of returns, bookshops—both trade and academic—introduced low stockholding strategies, relying on reorders when stock ran out. Academic textbook booksellers developed estimates for the sell-through they expected in particular courses—often as low as 35 percent of students—and stocked this number or less at the beginning of the academic year. As in other developing countries, the supply chain was generally inadequate to

support this model, leading to badly synched supply and demand and fueling student reliance on photocopying for access to materials.

This tendency to limit bookshop stocks at the beginning of university semesters was—and is—especially problematic for books ordered directly from the United States or UK (as distinct from those held in stock by South African-based publishers or distribution agencies). In 2013, these direct imports represented around a third of the turnover in the sector—some R230 million in retail sales (PASA 2014, 91). If stocks of these books run out, reordering can take six to ten weeks. For poorer students, this can pose serious challenges beyond the obvious financial ones: for reasons of geography and poor transportation, many can't go from bookshop to bookshop seeking available copies.

Cross-national Pricing: Territorial Markets and Parallel Importation Prohibition

One way that poorer countries mitigate the high prices of imported textbooks is by publishing locally licensed editions of popular international titles. This has been a particularly effective strategy in India, where the huge market base and potential for competition from state-subsidized or state-owned publishers have pushed the major international publishers to seek local partners. The effective use of this mechanism, however, is highly dependent on the size of the local market. In South Africa, the local market has proven too small to create adequate incentives for many licensed local editions.

Indian editions reach very large markets and tend to be considerably cheaper than the U.S. or UK versions of the book. However, Indian editions have rarely been available in smaller markets like South Africa, due to a combination of territorial limitations written into the licenses and parallel importation prohibitions written into South African copyright legislation. A UK publisher, for example, could license an edition of a book to an Indian publisher with the contractual limitation that this edition could only be sold in India. The ban on parallel importation prevents a third party from buying the books in India and importing them into South Africa.[17] South African booksellers could therefore legally import the original high-priced edition from the United States or UK, but not the cheaper version from India.

Prohibitions on parallel importation were introduced into the copyright law of most of the ex-British colonies at the behest of UK publishers and remain common in African copyright regimes. They are not, however, required by international copyright treaties such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). In South Africa, the ban secured British dominance of the local market. More generally, it continues to protect a complex network of cross-national territorial

deals—extending the territorial reach of a publication while protecting the publisher's ability to set different prices in different markets. The resulting fragmentation of the book market, however, is becoming an anachronism in an increasingly digital world.

International Student Editions

As a way to address these problems in smaller markets, the international publishers developed International Student Editions (ISEs) for selected titles, which they made available on a discretionary basis in certain countries. These titles often fell between the U.S./UK price and the price of the equivalent Indian edition. The International Student Editions were mostly targeted at the larger undergraduate classes and were indistinguishable from the full-price editions, although they often had a simpler cover. International publishers with a local presence in the South African market and distributors of imported books were likely to have large numbers of ISEs.

These international editions were sold through the bookshops. ISE prices were roughly comparable with South African textbooks, or slightly more expensive, but considerably cheaper than the more specialized textbooks used in the senior years of the curriculum, which were imported at the full U.S. or UK price.

The Impact of *Kirtsaeng v. Wiley*

This entire system has been thrown into disarray by the 2013 U.S. Supreme Court decision in *Kirtsaeng v. Wiley*—a case concerning parallel importation and its intersection with first sale rights. First sale or "exhaustion" is an important adjacent principle in copyright law that limits rights holder control of the circulation of the work to its *first sale*, after which the buyer may dispose of it as he or she wishes. This principle of full transfer of ownership after sale underpins major features of the learning ecosystem, including both library lending and the used book market.

The Supreme Court case arose from the activities of a Thai student, Supap Kirtsaeng, who purchased international editions of textbooks in Thailand, brought them back to the United States, and sold them to U.S. students at lower prices than the domestic editions. Kirtsaeng, in this context, was one of the more entrepreneurial representatives of a larger trend, as American students sought ways to game territorial licensing in order to lower textbook costs.

Kirtsaeng was sued by the publisher of some of the textbooks, John Wiley & Sons, for copyright infringement. The publisher won the first round of the case, resulting in a stiff fine for Kirtsaeng for violating parallel importation restrictions. The Supreme

Court, however, agreed to hear Kirtsaeng's appeal and ruled the other way. The court said that Kirtsaeng was entitled to first sale rights in books that he had purchased legally in another country, and that there is simply "no basic principle of copyright law that suggests that publishers are especially entitled to" [sell books for differential prices in different geographic markets].[18] In so finding, the ruling undermined the long-established differential pricing structure on which the international textbook market is based (and indeed the world book market as a whole).[19]

The effects of the Kirtsaeng ruling are still playing out in international markets, but the short-term outcome was not, as it ought to have been, the elimination of parallel importation prohibitions to allow for a freer and more equitable market. Although Australia proposed lifting parallel importation prohibitions on books in 2016, there is no sign yet of South Africa following suit. Rather, there was a rise in prices in most developing countries as U.S. publishers began withdrawing International Student Editions. In South Africa, these had largely disappeared by 2014, although some UK editions were still available. The standard editions could still be ordered, but at higher prices.

As the chair of the SA Booksellers' Association put it, at the time, in response to the Kirtsaeng case: "U.S. publishers are unwilling for the most part to forego the profits they earn on higher priced editions to continue supporting third world learners with cheaper ones. At present a number of prescribed texts are available in South Africa at prices over R1,000 ($99), which students will resist. How this will play out in the coming year will remain to be seen."[20]

A key tactic in limiting the fallout has been a tendency for international publishers like Pearson in South Africa to fast-track the publication of local South African editions of high-selling textbooks, priced for the local market.

Although these price increases did not take effect immediately, by 2016 prices of international textbooks had risen dramatically, with some undergraduate textbooks selling for over R3,000 ($230)—an unaffordable price in the South African context. Not all of this rise is attributable to Kirtsaeng: falling exchange rates have also played a role. In general, South African publishers agree that the Kirtsaeng case will be beneficial in the long run as the cost of imported books becomes prohibitive. Such a shift should, in theory, diminish the power of the multinationals and increase domestic publishers' share of the local market.

South-South Trade in Textbooks: South Africa and India

The absence of South-South trade in textbooks in this context is striking, particularly in the case of India, which has longstanding historical links with South Africa (Hofmeyr

and Deverakshanam 2009; Hofmeyr 2013) and a large low-cost publishing sector (Bhattacharji 2008). The possibility of such a relationship was not lost on the Indians. After the end of apartheid, in 1994, a high-level Indian publisher delegation visited the country to explore the potential for collaboration in higher education textbook publishing.

The South African universities and their faculty were cautious of these approaches, articulating concerns about Indian copyright infringement and copyright violations in Indian textbooks—both stories strongly promoted by the British and U.S. publishing industries. At the publishers' request, India was regularly placed on the "Special 301 Watch Lists" by the U.S. Trade Representative—the main mechanism for signaling U.S. displeasure with levels of IP protection and enforcement in other countries. Indian publishers saw this as a moral panic propagated by the United States and UK in the face of potential competition.

The U.S. and UK arguments were persuasive to academics and to an industry that appeared to place its global aspirations above questions of lowest-cost sourcing of materials (to say nothing of the potential advantages of trade with partners in emerging economies that might share common interests with South Africa). To this day, South African college textbook publishing has resolutely faced North, with serious price implications for students and, ultimately, for South African publishers that might have had opportunities to expand access into the Indian market.

Price and Affordability of International Textbooks

Because ISEs enjoyed economies of scale from being sold across a number of countries, ISE prices fell more or less into line with locally priced books. An American undergraduate textbook in media studies, for example, might sell in South Africa as an ISE for $53 (R690), compared to a full price of $119 (R1,555)—or $170 by 2017. An ISE science textbook might be $80 (R1,045) and a popular medical textbook $58 (R745) as opposed to $90–$150 (R1,175–R1,960) at full prices.

Because Kirstsaeng was a U.S. judgment, U.S. publishers have been the fastest to drop the ISE model. Cheaper editions were still available in some cases for a while after the judgment, notably for UK editions, where parallel importation restrictions remain in place, or when they were purchased through independent international wholesalers, or, possibly, because of deals made with local publisher branches. A brief pricing survey conducted in 2015 found major, and not always clearly explicable, variations in pricing, suggesting an environment in transition.

However, by 2017, prices had risen even further, making imported books unaffordable to most students. An increasing range of electronic media are being used in

conjunction with printed books and e-books, providing a bewildering array of options for faculty and students and rendering comparisons—and for students, comparison shopping—difficult or impossible. Increasingly, publishers are pushing digital courseware rather than books, an indication of the shift in strategy on the part of the academic publishing industry.

The implications of these increasing price levels for South African student budgets are nonetheless significant—especially given the government interest in expanding access to education. Over 40 percent of households headed by black South Africans, for example, are categorized as "poor," with *annual* incomes under R33,000 (roughly $4,700 in 2011) for a family of five.[21] In such contexts, the difference between a $10–$20 textbook, a $50–$70 textbook, and a $100–$130 textbook, let alone a $300 textbook, multiplied across multiple classes and potentially multiple children, can be enormous. In practice, as we will see, even "moderate" South African prices frequently represent no choice at all: students do without.

Growth in Local South African Textbook Publishing

Pressure for lower prices and greater South African content has contributed to substantial growth in locally published academic and professional books. The sales percentage of locally produced textbooks has steadily grown since the advent of a democratic government, from a 65/35 percent split in favor of imported texts in the early 1990s to a roughly 60/40 percent split in 2013 in favor of local books, published either by South African publishers or by the local branches of international publishers, such as Pearson and Oxford University Press (PASA 2013).[22] There has also been a steady increase in the number of locally produced academic e-textbooks produced, year on year, perhaps reflecting greater potential for e-textbook growth in the wake of rising local investment in electronic products, such as Vital Source.

In fields where local content is at a premium, such as the teaching of law and accounting, South African publishers completely dominate. Ninety-one percent of law and accountancy textbooks are published locally, with most of these supplied to practitioners rather than students. Overall, the output of academic and professional books by local publishers stood at 284 new titles in 2011, of which 150 were academic textbooks and 78 professional books. Imported textbooks, on the other hand, saw a net decline in sales of a cumulative 37.7 percent in the 2008–2011 period.[23]

On the whole, there has been evolution in the sector rather than a radical transformation in products and market strategies. What has changed most, arguably, is the level of responsiveness to market realities: publishers are reporting closer relationships

with students and greater investment in development to ensure language appropriate-
ness and pedagogical soundness; and publishers are trying, without much success, to
change the racial profile of authorship. Local publishers are very aware of price sen-
sitivity among students and tend to cap their prices at levels that will not meet with
customer resistance—claiming that profits are falling as a result.[24]

Of the international publishers with a local presence in the South African market,
Pearson Education is the largest player, with a dominant position in the supply of inter-
national textbooks and an expanding list of locally published books and local editions
of international titles. In the early years post-apartheid, Pearson developed specialized
materials for the learning gaps that undermine graduation rates—much of this via the
local branch, Pearson Education South Africa (PESA). Other international companies
publishing in the local market include the local offices of the Oxford University Press
(South Africa). OUP, post-apartheid, publishes an increasingly substantial list of aca-
demic textbooks in South Africa, having considerably expanded its medical and legal
textbook lists, among others. The take-up of the medical textbooks, in particular, has
succeeded in supplanting more expensive international titles.

Despite government statements in favor of greater Africanization of the university
system and some successful efforts by publishers to introduce a more locally relevant
curriculum, books published by local publishers tend to be written almost entirely in
English—96.7 percent according to 2013 industry statistics—complemented by a niche
market in Afrikaans (3.3 percent) and nothing at all in African languages (PASA 2013).
Contributing factors to this dominance are the widespread use of English as the lan-
guage of instruction and, among students, the aspirational association of English with
job opportunities.[25]

Scholarly Publishing and University Presses

University presses provide a framework for scholarly communication in South Africa,
but this sector is not a major contributor to student learning materials (Pascal 1996).
With nearly all science and engineering research published overseas, press output
focuses on the humanities and social sciences, where South African themes and con-
tent are important. It is these titles that, in theory, ought to have produced the alterna-
tive curriculum advocated by student radicals in the 1970s and 1980s and articulated
in the higher education policy drawn up by the new ANC government.

The overall number of titles produced by South African university presses is low.
According to a study by the Academy of Science of South Africa (ASSAF 2009) and
bibliometric studies by CREST at the University of Stellenbosch in 2009, and being

followed up by ongoing research, 389 monographs were published by authors in South African universities between 2001 and 2006, with the larger university presses accounting for around ten to fifteen titles per year. Sales are also low. Consistent with the experience of small U.S. and UK university presses, most titles can expect lifetime sales of 200 to 500 copies; very few titles sell more than 1,000.

As in other countries, the university presses have struggled to develop a new business model that addresses either the weaknesses of the traditional distribution model or the opportunities of the digital transition. There are, however, three areas where national policymakers have stepped in to create solutions to perceived weaknesses of the ecosystem.

The first and, at this stage, the most promising, is the Department of Science and Technology's support for the creation of a publicly funded national open access platform for South African scholarly journals, called SciELO South Africa, managed through the ASSAF.[26] The project is a collaboration with the successful publicly funded Latin American journal platform of the same name, based in Brazil and now the second-largest national provider of open access scholarly journals in the world. Scholarly books have been included in the SciELO platform in Latin America since 2012, but not yet in South Africa.[27] A venture such as this could well provide a conducive environment for addressing the demand for African-relevant titles that could be used as textbooks in the social sciences and humanities.

The second policy intervention is the system of financial rewards instituted by the Department of Higher Education and Training, whereby universities and departments receive substantial per-article grants for articles published in "recognized" journals (around $9,100/R120,000 per article at the time of writing) and starting in 2016, for scholarly books. The money goes to the institution, which, at its own discretion, can pass on a part of the grant to the author, rather than directly supporting publication or authorship (and most universities do so).[28] It has also fueled the scramble for prestige through journal articles published in ISI-ranked international journals rather than local content and has tended to discourage faculty from top research universities from investing in textbook writing.

However, in spite of these grants, and in the face of declining government subsidies for universities, there is a general lack of financial support from universities and the government for the production of scholarly books, as opposed to authorship by faculty. Instead, the presses are expected to be "profitable" or, at the very least, able to operate with diminished levels of financial support from their host university. This is an increasingly unrealistic expectation even in the richer markets of the United States and UK, where university presses have traditionally been perceived as an investment

in prestige by their home institutions. As in those markets, the South African university presses have responded by trying to focus on broader scholarly and trade markets, rather than on scholarship per se. As the ASSAF study on scholarly books puts it: "The paradoxical outcome of this logic is that scholarly publishers can only remain in the field if they are able successfully to move beyond it. They have to operate in adjacent fields in order to generate the required revenue to sustain the scholarly publishing programme" (ASSAF 2009, 66).

A complicating factor in the availability of books for prescription from the humanities and social sciences is an increasing trend for local authors to seek prestige by publishing overseas with publishers like Routledge and Palgrave, which produce high-quality books in small runs, sold at very high prices by South African standards.

The third high-level intervention in the publishing ecosystem was the establishment of the Human Sciences Research Council Press in 2003—an offshoot of the research funding body—on an open access model. In 2008, HSRC Press books were distributed in 11 countries, but were being read online in 184 countries (Rosenberg 2008). Its successful titles could reach 1,000 downloads a month, and its publications were widely used as teaching materials.[29] In the face of budgetary constraints in the organization, and under the common misapprehension that scholarly publishing should be profit-making, the HSRC reduced its output, retreated from its fully open access mandate in 2012, and substituted a delayed open access of six to nine months or, in some cases, no open access provision at all, thus considerably reducing its impact. In a recent speech at an HRSC Press book launch, Science and Technology Minister Naledi Pandor criticized the move, stating, "The HSRC Press has done much to decolonize that link in producing new knowledge. It's all very well for me to pronounce on our need to train more and more PhDs in the social sciences. But that call is pointless if candidate and graduate PhDs have nowhere to publish other than to go abroad."[30]

A key question is who will anchor the next curricular paradigm: the universities or the publishing sector? Here, answers are shaped in part by South African copyright law, which creates the legal environment in which alternative models of provision are emerging.

Copyright Meets the Right to Education

Debates about access to learning materials now refer, in part, to the South African Constitution of 1996, which makes explicit the right to both basic and higher education. Largely a nascent proposition in the 1990s, debates over the meaning and scope of this right sharpened as student numbers increased and as the system, in significant

ways, continued to fail large numbers of them. Better implementation of this right has tended to focus on two mechanisms for expanding access to materials: South African copyright law, which structures both the formal marketplace and informal means of acquisition of books and other materials, and government-supported student loans, which have a broader remit to support educational success, but which have consistently focused on the cost of materials.

The Copyright Act

Copyright in South Africa is governed by the Copyright Act No. 98, passed in 1978, originating in the British Copyright Act of 1911, which was incorporated wholesale into the first South African Patents, Designs, Trade Marks and Copyright Act of 1916. The official title, of the British Act, the "Imperial Copyright Act," identified the role of this original legislation as a mechanism to protect British copyright in a colonial country.

In spite of some amendments to the South African Copyright Act of 1978, there is general agreement that copyright law in South Africa is badly out of date and needs a thorough overhaul. It makes no provision, for example, for the management of digital copyright. Longstanding questions about educational exceptions, liability, and enforcement in the era of photocopying and now digital reproduction remain unresolved. Plans for revision have been on the legislative calendar for several years but the issue has been repeatedly deferred, with extensive proposals for copyright reform only emerging in the Copyright Amendment Bill B-13-2017, still in the process of public discussion. This long delay reflects a political hesitancy that most observers attribute to the late 1990s debacle around anti-retroviral AIDS medications, which put South Africa at odds with the United States over the parallel importation of generic medicines from India (Armstrong et al. 2010; Schonwetter, Ncube, and Chetty 2010; Gray and Seeber 2004).

One of the benefits of this inaction is that South Africa has not adopted the levels of protectionism and enforcement associated with much of the "TRIPS Plus" agenda set out in international treaties and built into legislation in the United States in particular. Whereas the "Agreement on Trade Related Aspects of Intellectual Property Rights" (TRIPS 1994) set down minimum standards for international intellectual property rights, the expansion of these rights (TRIPS-Plus) that has taken place in bilateral agreements, has come to dominate international copyright debates. These have led to U.S.-style notice and takedown requirements accompanied by high penalties for even minor infringements, or copyright term extensions beyond "life plus 50 years" (Schonwetter,

Ncube, and Chetty 2010). From the print industries' perspective, the main problems with South Africa's Copyright Act of 1978 have to do with the absence of provisions for digital media and weak enforcement measures to deal with piracy. In reports drafted by the industry, such as the PICC Report (Gray and Seeber 2004) and in other public statements, publishers have argued in particular for higher statutory damages in cases of copyright infringement in order to create a meaningful deterrent against commercial piracy, and improved provisions for obtaining evidence in order to prosecute cases of commercial-scale infringement (Gray and Seeber 2004). Neither effort has borne fruit.

Enforcement

In the face of legislative deficiencies (from the point of view of the industry) and given the high legal costs of enforcement, rights holders have been reluctant to pursue cases under the copyright statute. As a result, there is very little South African case law on copyright infringement. Instead, the industry has turned to a newer piece of legislation, the Counterfeit Goods Act of 1997, which is designed to protect owners of copyright goods and trademarks from illegal possession, production, selling, and distribution of such goods (De Beer et al. 2010). However, even under the more enabling provisions of this legislation, the publishing industry has pursued very few cases (and when they have, the resulting penalties have been low). The biggest of these cases tackled large-scale copying and distribution of school and university textbooks.

Industry representatives interviewed in the African Copyright and Access to Knowledge (ACA2K) investigation, a continent-wide review of the state of copyright legislation,[31] reported additional resistance from government departments when it came to pursuing cases regarding education, given the emotive status of the debate about access and the cost of textbooks. The perception of the Department of Trade and Industry was that enforcement and anti-piracy cases should focus instead on trademark violations. Access to education in this view trumps copyright as the priority (Schonwetter, Ncube, and Chetty 2010, 263–264).

Exceptions and Limitations

The legislative environment was complicated by disputes about the scope of exceptions and limitations in South African copyright law, particularly with regard to educational use, and two decades after the end of apartheid this is still the case. There are, for example, provisions that cover a variety of library and archival needs, such as the copying

of an entire work or substantial parts of works if an unused copy of the copyrighted work cannot be obtained at a fair price (Schonwetter, Ncube, and Chetty 2010, 239).[32] Copying for private use is governed by a "fair dealing" section that allows for the use of literary or musical work "for the purposes of research or private study by, or the personal or private use of, the person using the work" (240). There are also provisions for educational use that allow for use of a work by way of illustration for teaching purposes and for translations of works for educational purposes (ibid.).

A complicating factor in these provisions are the specific exceptions for educational use contained in the Regulations linked to Section 13 of the Act. These allow for copies to be made for classroom use, and the making of a single copy for purposes of teaching. However, these are all governed by a general and overriding principle contained in Regulation 2, which provides that "the cumulative effect of the reproduction does not conflict with the normal exploitation of the work to the unreasonable prejudice of the legal interest and residuary rights of the author" (Schonwetter, Ncube, and Chetty 2010, 241). There is no clarity as to exactly what constitutes a "reasonable portion."[33] In other words, copying for educational purposes can be undertaken—perhaps even the creation of coursepacks, although publishers have frequently contested this— but copying cannot in any way threaten publisher earnings. This raises additional issues in a developing country, where the small market size puts a much lower limit on the extent of copying that could meaningfully erode such earnings (Wafawarowa 2007).

These ambiguities produced circular arguments for and against generous exceptions and disputes about what constitutes "fairness," creating a permanent stand-off between universities and publishers on an issue of fundamental importance to educational access.[34] An attempt by the University of the Witwatersrand in the early 1990s to broker a workable mutual understanding of what would constitute fair use in university copying eventually broke down when the university lawyers concluded that the ambiguity of the legislative environment played to the advantage of higher education institutions. They terminated the negotiations.[35] The first signs of a long-promised overhaul of the copyright act emerged in a Draft National Policy on IP in late 2013 (DTI 2013). Although proposed reforms were not charted in detail, the tone was weighted toward better balance and the exercise of democratic rights in education and health.[36] In 2016, draft proposals for amendments to the Copyright Act led to lively debate with local and international copyright scholars arguing for the introduction of Fair Use provisions in the South African Copyright Act No 98 of 1978, to provide a more robust and effective environment for educational uses.

Collective Licensing

After apartheid, the primary policy goal of the publishing industry was a collective licensing agreement that would establish a flat fee for all photocopying in the universities. This process was undertaken by the DALRO—the Dramatic and Literary Rights Organization.[37]

As before, the negotiations were turbulent. DALRO threatened massive penalties for university departments that had embraced coursepack copying during the academic boycott. Protests erupted across the university sector, especially from the black rural universities that in many cases still stocked libraries with photocopied books and journal articles. Nonetheless, strong government support and EU funding granted to the poorer universities as an inducement produced agreement in 1997–1998. The blanket licensing agreement was fully implemented by 2004–2005.

The blanket licensing system aligned broadly with the UK model, which allows publishers to sign on voluntarily, rather than the Nordic model that compels all publishers to participate. The agreement covers all copying of participating members' work undertaken during the academic year within agreed upon percentage limits with respect to the work. The administration of and reporting on levels of copying is undertaken by the universities. For publishers outside the system, the university consortia that administer the agreement have to obtain separate permissions for any copying of works and pay for these over and above the per-student fee.

What the blanket license provides for is the creation of multiple copies of articles or coursepacks for photocopying, placement on the library short-term loan system, and electronic storage on the university intranet and library electronic reserve, which can then be accessed by students registered for the course in question.[38] Student photocopying beyond these provisions can usually benefit from preferential rates at university-based photocopy shops paid for through credits loaded on student cards. Theoretically, this photocopying should be contained within the limits of fair dealing, but the general consensus is there is little oversight of copying levels, apart from warning signs set up in university copy shops, and few publishers willing to undertake prosecutions for excessive photocopying.

Most publicly available information about the agreement and the way it operates comes from a 2011 government investigation of collective rights management organizations, initiated by criticisms that the music rights organization SAMRO, in particular, had an excessive backlog of unmet payments to artists. The Copyright Review Commission, with Justice Farlam as commissioner, expanded its purview to include a review of

the collection of literary rights—in particular the agreements between DALRO and the universities (DTI 2011).

In broad strokes, the agreement made the universities responsible for reporting on the number of copies made for classes and for levying an annual fee from students to cover their copying costs.[39] In 2009, this fee was around $6.50 per student at universities and $5 at the polytechnic schools. It was calculated according to estimates of historical copying levels, but incorporating a reduction to allow for copying undertaken by students and staff that would qualify as fair dealing. (Rates have risen on an annual basis in line with inflation, but have never been renegotiated, unlike in many other countries.) DALRO then distributes the revenue collected to the participating publishers, who are, in turn, responsible for calculating and paying the amounts owed to authors as part of their royalties. These royalties are determined by contracts drawn up between publishers and authors and are therefore not open to public scrutiny.

The Copyright Review Commission reported that "in the 2010 calendar year, the total amount collected from licensing was around $4 million (R28,582,389) and the total amount distributed was $3 million (R21,601,415), of which $1.2 million (R9,477,661) was distributed to local rights holders. The low returns to domestic rights holders, moreover, have led to criticism that the system favors international publishers: most of the licensing revenue sent to DALRO leaves the country.

The IP Unit at the University of Cape Town, in its submission to the Copyright Review Commission, argued that the blanket license agreement does offer efficiencies, but could equally well be charging for the reproduction of materials that should fall under fair dealing provisions.[40] However, DALRO claims that it does not make a profit from its university licenses, and low charges would be to the advantage of universities and their students. The commission determined that DALRO's return to publishers was lower than in other countries, leading to recommendations that it improve its procedures for managing and compensating authors.

In general, when interviewed, parties on both sides of the agreement appeared at this stage to be content to leave well enough alone. As a publishing industry representative put it, in 2013, "DALRO is now doing a marvelous job." Others were less effusive, but tended to be broadly supportive. The license offers revenue, another commented, that boosts the bottom line in markets that would otherwise not have been viable. Other inquiries have found less support, marked by concerns that the blanket license was onerous for the universities that had to undertake the administrative work of monitoring copies, and that the universities had not been aggressive enough in negotiating the rates (Schonwetter, Ncube, and Chetty 2010, 261).

Student Loans and Stipends

Copyright law and curricular mandates remain contentious in part because they affect the publishing ecosystem, altering the balance between buying and copying on the one hand and between domestic and international suppliers on the other. But these are mostly indirect forms of government influence. The state provides no support for the development or publication of learning materials, nor indeed for local publishing as a creative enterprise.

There is a strong government role, on the other hand, in the growth of university stipends that make explicit provision for book purchases. Created in 1999, the National Student Financial Aid Scheme (NSFAS)[41] provides funding for textbook purchases as part of a much broader program for student support through payment of course fees, meals and residency plans, and other allowances, in the form of some student grants but primarily through loans repayable after graduation, when the student secures a job. In so doing, it frames the problem of access to materials as a subset of the larger problem of access to education, particularly in light of the steeply rising cost of university education in South Africa.

The fund has played an increasingly important role in enabling access to learning materials. Between 1999 and 2017, the fund grew substantially, from a base of around $57 million (R441 million). In 2017, NSFAS announced that it would be supporting 400,000 students, on a budget of R15 billion ($1.2 billion). Funding was originally administered through universities, but NSFAS has switched to a system of direct payments to students, not without teething problems.

The levels of funding for books—ranging between $70 (R1,000) and $140 (R2,000) per semester, depending on the school—represents roughly two to three textbooks in most contexts[42] and so rarely covers all assigned books for a particular year of study. But students—according to a leading bookseller—are careful optimizers, selecting those that will best improve their chances of success in their courses. The importance of choosing which courses to buy materials for also strongly emerged in this study's student survey and focus groups.

The bursary (monetary award to meet financial needs) schemes are very popular, but also vigorously criticized as inadequate for student needs as well as being bureaucratically inefficient. The main challenge has been that, except for certain instances, the grants are structured as repayable loans. Combined with the extreme poverty of many of the students, the repayable loan provision has proven onerous and resulted in high levels of unrecovered debt. The situation is made worse by a provision that degree certificates can be withheld if there are outstanding amounts in loan accounts—a result

that can also, all too often, be the result of inefficiency in the administration of the system.

The 2014 academic year in South Africa saw a number of sometimes-violent protest actions against the NSFAS across the country. Fort Hare University—located in South Africa's second-poorest province and the alma mater of many South African anti-apartheid leaders—was the site of one such protest. Fort Hare students undertook a four-week strike protesting what they regarded as reneged promises of funding for books, meals, and student fees.[43] The University of Limpopo in the north of the country and Mangosuthu University of Technology outside Durban saw similar actions. The Tshwane University of Technology saw violent protests late in 2014, resulting in closure of the university for a period, with the question of funding for fees and books high on the list of grievances—in particular, student exclusions as a result of failure to pay fees.[44] In 2016, budget shortfalls and the exclusion of some students from funding triggered another round of protests in many universities.

The question of student loans, and particularly the repayment of loans, has proved to be a particularly thorny issue with students due to the weakness of South Africa's employment market. In the wake of these developments, student protests have coalesced around the principle of free tuition—a reasonable reading of the 1994 constitutional right to education but a very ambitious goal given the financial pressure on the state and national governments and the current low levels of funding for the university sector.

Student Practices

The bursary system also enjoys strong support from publishers, largely because funds are reserved for the purchase of new materials. Neither publishers nor booksellers, however, have much information about how students get what they need outside the bursary system. Most of them view photocopying as the main form of student access, and the blanket license with DALRO as a satisfactory way of dealing with copying at this level. They tend to see the license agreement as a source of revenue for the industry that would otherwise be lost to the large informal economy, rather than susceptible to recuperation from students through enforcement or other forms of pressure. Few see much benefit in provoking the powerful student activist movement, which is organized in response to the escalating cost of higher education.

Accordingly, publisher enforcement efforts have largely ignored students in favor of targeting the copy shops that reproduce textbooks on a large scale for sale in peak seasons. As in other countries, these are the easy and preferred targets—vulnerable to raids

and operating on a scale that triggers criminal charges. Unauthorized downloading—an obsession among the music and film trade associations—remains a comparatively distant worry, a potentially threatening but not yet a measurable factor.[45] The second-hand market for textbooks is fragmented, with no major commercial players under-cutting the market for new books. Publishers do invest in educational efforts, though less to discourage photocopying than to convince students of the value of owning textbooks. As Juta Academic Publisher's promotional literature at the Vaal University of Technology put it: "Statistically, only one in three students passes each year—and only 15 percent of all students will ever graduate. As research by Juta Publishers shows that a main cause of student underachievement is failure to buy textbooks, the company launched a national Student2book campaign to encourage students to buy textbooks and, therefore, improve their pass rate."[46]

In short, the range of competitive pressures on the industry and the highly regulated structure of the bursary system means that,as one publisher put it, "Piracy is not an issue in South Africa. The issue is rather rethinking what academic publishing is about."[47] The survey and focus groups undertaken for this study confirmed elements of this perspective, but also yielded a more complex account of the materials ecosystem.[48]

Buying Books

The impact of the bursary system is visible in purchases of new books. A third of students surveyed said that they bought 80–100 percent of their textbooks new; 19 percent bought 60–80 percent new. This is a much higher figure than in comparable settings in Brazil, India, or Argentina, where new book purchases are infrequent.
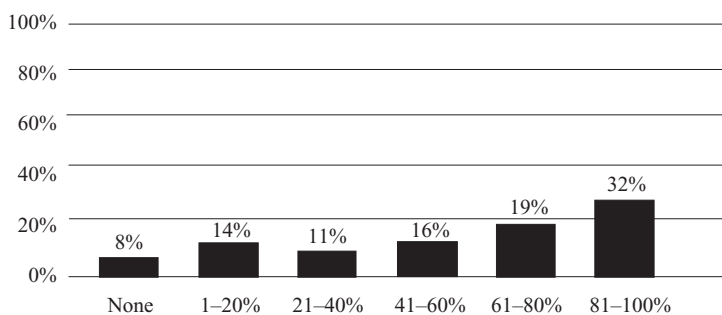
Figure 5.1
How much of your material is purchased new?

Most students (75 percent) reported spending less than $300 (R3,000) per year on new books, while 14.8 percent reported costs of between $300 and $500.[49] Costs were particularly high for law books, with some textbooks costing $100 (R1,000) or more.

Professional students were more likely than others to keep books, citing primarily the value of having a reference collection for later use. In some cases, this was expressed in the strongest terms. Said one student, "When you go into practice one day, and you're in the rural areas where you don't have access to [I]nternet or something, your book is there and you can flip it over and see 'OK, I need to apply this principle to treat this thing.' So for me, selling some books just feels like I'm giving away my life. I can't."

It was clear that, from the students' perspective, there are three main obstacles to buying textbooks: high prices, a fragmented second-hand market (exacerbated by the issuing of frequent new editions), and the move to minimize excess stock, which results in frequent mismatches between supply and demand at the beginning of semesters. Several reported that, in the case of international reorders, books only arrived days before examinations. Bursary students were often the most affected by such practices, as the relatively common administrative delays made them unable to buy books when they were most likely to be available at the beginning of the semester.[50] Poor students were also less likely to be able to compensate for low availability by traveling to find stock elsewhere. Said one such student, "I drive around, you know, because I have a car, but a lot of people can't drive around from bookshop to bookshop."

Student Sharing Networks

The lack of a large, organized used-book market hinders access to previous-year textbooks compared to—for example—the highly organized commercial vendors like Amazon and Chegg in the U.S. market. This is reflected in the relatively small role that used book purchases play in student acquisition practices.

The lack of organization of the used book market is at least partly related to the difficulties associated with student access to online commerce in general. Many students lack access to credit cards and operate with cash, making online purchases difficult. This is, in all likelihood, a temporary problem as e-retail in South Africa expands.[51]

The weakness of commercially organized resale, however, does not mean that used materials play a minor role. Students spoke constantly about practices of informal, locally organized sharing, passing down, and resale of textbooks. This practice is common in student residences and frequently organized across cohorts, in which more senior students support first-years with materials. Explained one first-year student:
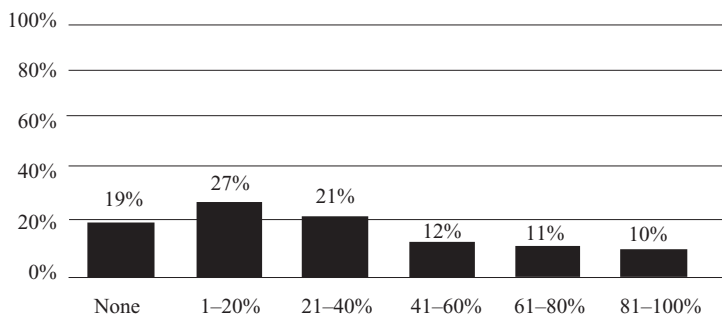
Figure 5.2
How much of your material is purchased used?

Students ... pass down information from one year to the next year, so you actually find that I've got work until the [final] year. You know what I mean? All the stuff that I am supposed to go and research by myself and do by myself. ... So instead of going to consult textbooks and the Internet and go do the research that would require us to use all those resources, senior year students have made it very easy for us.

The library emerged as a relatively strong alternative to buying books, primarily due to the practice of one-day loans of in-demand texts. Seventy-five percent of respondents indicated that they borrowed materials occasionally or often, although large numbers also indicated that availability often broke down during exams and other periods of high demand. Multimedia access, too, was a regularly cited problem among the communications students, with more of the burden falling on lecturers to make the necessary materials available. Faculty members also play a role in facilitating access via lending or copying of materials, or by preparing "updates" that permit the use of older editions of textbooks.

Photocopying

Although the textbook industry perceives photocopying as being the major route for student piracy, survey answers suggested otherwise: 67 percent of students said that they photocopied few to no copies, with only 2 percent admitting to copying over 80 percent of their materials.

In the focus groups, the expense of photocopying was frequently mentioned as a major deterrent. Our survey indicates that a large majority of this copying takes place on the university campus, at the discounted cost offered by on-campus copying. Anecdotally, the cost of photocopying at the better-resourced university where the study
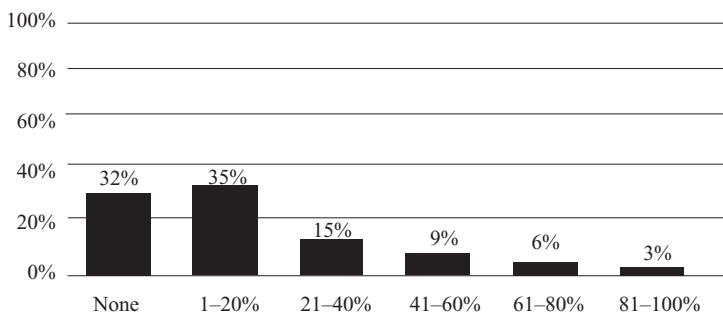
Figure 5.3

How much of your material is photocopied?

was undertaken was cheaper, at \$.03 (R0.35) per page, than at poorly resourced universities nearby, where copies were \$.05 per page. For students figuring out how to maximize use of a budgeted \$70 or \$100 per semester on course materials, such differences can be very significant. Only 18 percent of respondents indicated that they use off-campus copy shops, suggesting a relatively minor role in the ecosystem for unauthorized "commercial-scale" copying.

Digital Materials

In practice, student access to materials is cobbled together from a wide range of sources and methods, with none clearly dominant. The bursary system supports new book purchases for some students but is insufficient for student needs. The blanket license legalizes a large portion of student photocopying—that of class-level and coursepack copying—but photocopying remains too costly to be a complete solution for individual students. The organized used book market plays a small role; informal sharing, passing down, and personal resale play a large role. Students make careful decisions about which books to buy or acquire, trying to prioritize those that will have the most impact on their classes and careers. The library provides access in some contexts, but does not scale well for either regular studying or exam times. When these methods fail, large numbers of students simply do without.

    The shift toward digital materials and digital reading has begun to have a visible impact on student practices, and produced a further deformalization of the ways in which students get what they need. Although many students expressed a preference for print materials, the cost advantage of digital copies for those with ready access to laptops or tablets is clearly an important factor.[52]
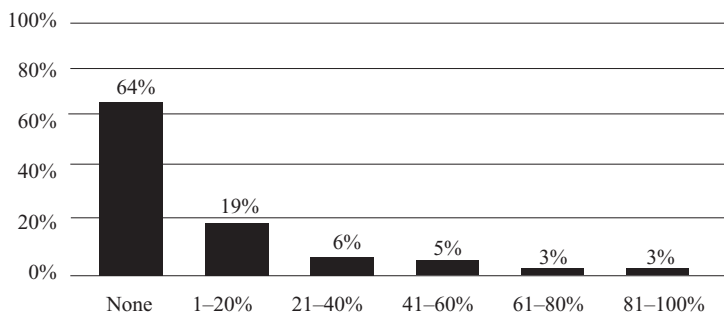
Figure 5.4
How much of your material is downloaded from sources believed to be illegal?

As one student put it: "Well, I know a few kids photocopy stuff, but that's just expensive, printing out stuff. So, I just read everything off my tablet and download PDFs from … you find everything online anyway, so I don't know why the … department was fretting about putting it on the LMS because, you literally just Google whatever title you're looking for .pdf, and it pops up with it. So, it's Google's fault." Here distinctions between sources of digitized material have become relatively fluid, with unauthorized file sharing via peer-to-peer or major file locker services factored in among an array of forms of personal and group exchange. Fewer than 10 percent of respondents indicated that they had downloaded the majority of their materials this way, although this might reflect an unwillingness to admit too readily to online file sharing.[53]

In comparison to perceived illegal downloading, roughly twice as many students (around 70 percent) indicated that they obtained the majority of their materials digitally from other students. The student networks that support textbook sharing and reuse create fertile ground for the sharing of digital materials and students and faculty make use of a wide array of systems. Of the 70 percent who share materials digitally, 80 percent do so via email, 51 percent via thumb drives, 18 percent via file storage services like Dropbox, and 10 percent on social networks like Facebook. Roughly two-thirds described this as organized activity, passing from class to class and from one cohort to the next. Perhaps predictably, 90 percent of these students also share music via the same methods; 71 percent do so for movies.

The legality of copying in these different contexts was a matter of uncertainty for many students, in this respect accurately reflecting South African legal debates. Roughly half said that they believed that copying files from other students is legal. Even among those who viewed it as illegal, indifference was the common response. Students were not very responsive to anti-piracy rhetoric in general (Yu 2012) and much less so in

the context of educational materials, where the framing of education as a human right generally trumps other considerations. To deny access, as one student put it: "Simply because of resources; that's ridiculous in this day and age. So, kudos to [the author] for his textbook, but I need a degree. Sorry!"

Another, asked about whether he had any fears about illegal downloading, answered: "No, worried about graduating." Although student opinion was more favorable to authors than publishers, the easiest way to void student sympathy was for teachers to require their own texts in class—a relatively common practice widely condemned by students as profiteering.

The explosion of use of "free" online resources that supplement classroom materials has also blurred lines in the minds of students. For any given class or subject, there are often supplementary materials provided by faculty and always a range of potentially complementary materials available online. Students stressed the usefulness of lecture slides and videos sourced on the university LMS in particular, as well as—among medical students—YouTube for videos of medical procedures. University provision of podcasts or videos of lectures on the LMS also proved popular. Database access at this university is also relatively strong, and law students have joined a professional culture built around online research, with widespread use of LexisNexis and Juta Law.[54]

Overall, the student responses are striking for the seriousness with which they approach the purchase of textbooks (something also commented on by a number of publishers and booksellers); for the wide and inventive array of strategies they deploy when the money for new books runs out; and, notably, for the pervasiveness of a view of learning materials that stresses flexibility, collaboration, and variety in the range of materials used. This move away from a focus on the textbook as the sole instrument of instruction is part of a larger shift away from more monolithic views of institutionalized learning—echoed, among other places, in recent proposals for curricular change advanced by government and university associations, as well as by broader changes in the curriculum provision landscape (Czerniewicz et al. 2014). These strategies also have their analogs in publishing, where the flexibility and additional forms of student support enabled by digital delivery are beginning to undermine the textbook model from the other direction.

The Modular, Flexible Future

In 2013, the Council on Higher Education (CHE) proposed a new round of curriculum reforms to address continued poor graduation rates and ill-preparedness of students

from the secondary school system to the Ministry of Higher Education and Training. Policy documents called for greater integration across the different institutions in the higher education sector, a cross-disciplinary approach to the integration of African languages in the curriculum (DHET 2013, 38), and—reflecting earlier approaches to curricular reform—a need for more locally relevant materials. These policies argued for the implementation of elements of the earlier 1997 *White Paper on Higher Education*, which proposed the "development of a national network of centers of innovation in course design and development" and made a strong argument for wider use of open educational resources and open licensing to address the chronic dilemmas of high cost and poor access (DHET 2013, 54–60).

"Flexibility" became the watchword in this current round of proposals, which generally means the need for more modular learning resources that can support a wider range of pathways through four-year degrees, with different routes and different levels of support for students with different degrees of preparation. At present, these plans have not been translated into public policy and have little likelihood of producing major new institutional mandates or funding streams. There is currently no means to financially support the production of learning resources or the publication of locally produced textbooks to meet the requirements of such a system. However, the white papers point in a direction that some of the major publishers and universities are moving already, with the uptake of entirely new strategies. The result is a complex and transitional ecosystem marked by considerable experimentation.

Open Educational Resources (OER)

At the annual publishers' meetings in mid-2008, UNISA was reported—to the consternation of publishers—to be planning a move to consolidate the delivery of learning materials around its own courseware packs, changing and perhaps reducing its reliance on textbooks. Although it then stepped back from this commitment, UNISA continues to develop OER policies and content, as have other universities. If this shift continues, it will mean a very different role for publishers—and not necessarily a diminished one. Pearson is working with UNISA to build new courses on this model, providing publisher support for the development of materials. The institutional infrastructure for large-scale development and use of these materials appears to be emerging via UNISA Open,[55] which includes UNISA Open Courseware and an array of partnerships with open access initiatives.[56]

e-Textbooks

The most direct publisher shift toward digital models involves the sale of what are, essentially, digitized versions of the physical textbooks, enhanced with such features as the ability to take and share notes. Some of these e-books also offer access, via an included code, to a website with additional electronic and interactive services. The main commercial e-textbook solution in South Africa is Vital Source by Ingram, a major international book distribution company with a large catalog of titles drawn from many different publishers. (It is, reportedly, also the most-used digital textbook platform in the United States.) The goal is to provide digital textbook delivery at a lower price than print.

Vital Source launched in South Africa in 2014 with 464 titles from Wiley, at a standard price of $40 per title—at least 30 percent less than the average print price. The launch of this list was complicated by the technical infrastructure needed to restrict access to South African buyers (via digital rights management and geocoding)—in order to avoid both parallel importation and political backlash from U.S. students, who are paying considerably more for the same books.

Vital Source is well integrated into the South African book retailing sector, with a strong presence, in particular, in Van Schaik Bookshops. There are in-store kiosks in its major stores, piloted in field tests with UNISA, which allow students to download and activate e-books without requiring a continuous Internet connection—a critical feature in bandwidth-poor South Africa. Local publishers such as Juta are using the platform to distribute digital versions of their textbooks and the system will eventually integrate with university intranets and libraries, allowing for bulk institutional deals.

Although the Vital Source products are being taken up relatively slowly in South Africa in their initial phase, publishers and booksellers appear confident that they will find a strong position in the learning material ecosystem in the next few years.

Toward a Digitally Mediated Ecosystem

For decades, when academic textbook publishers were asked about their core business, their answer was "content." They meant that they commissioned, developed, published, copyrighted and distributed the materials that would be taught in classes. This business model—as in other so-called content industries like music and film—was lucrative and understood by all parties. Therefore, it is startling, to say the least, to hear leading publishers now say, "Content is not our core business."

The major college textbook publishers in the United States are progressively stepping out of the content role, seeing their strategic role in a larger field of learning delivery and support. The big five—McGraw Hill, Cengage, Macmillan, Pearson, and Wiley—have invested heavily in courseware and online learning environments that are increasingly customizable, interactive, and, from the student perspective, personalized.[57]

The content that used to be at the heart of the business is now secondary to the core business of providing learning support systems, which can include content other than that produced by the publisher. Pearson, for example, is increasingly investing in the creation of Pearson colleges of learning, which have a strong emphasis on electronic learning systems.

The collective impact of these events—including the rise of online university-based course delivery, the used book market, open education resources, and file sharing—has been a sharp fall in the profitability of textbook companies. There has been downsizing, restructuring, strategizing, and, in the cases of Cengage and Houghton Mifflin Harcourt, declarations of bankruptcy.[58]

The change of direction in the large companies is still nascent: teaching methods and practices change slowly and lag well behind the technological curve.[59] But they are having a large impact in the struggle to shape the future of educational publishing. Traditional publishers are becoming full-spectrum service providers for classroom learning and research, encroaching on tasks performed by libraries, bookstores, teachers and administrators, and technology providers, and incorporating a variety of other student support services. Increasingly, educational publishers understand their competition not as other publishing companies, but as telecommunications companies, software companies, information retrieval providers, and the like. Unlike the music and film industries, however, the educational publishers have had more time, less pressure to evolve toward digital media, and markets that remain largely embedded in institutions, which are more resistant to disintermediation and reliance on individual textbooks than the various consumer markets for "content." As a result, they have so far remained in control of these markets even as their roles are changing.

In the student focus groups, OER curricula and resources intersected the paths of only a handful of students—notably those who had experience with the digital commons. In these contexts, OER materials were greeted with enthusiasm by students. But there is a clear disconnect between issues concerning bursaries, which affect students directly, and the production and adoption of OER materials, over which students have little agency. Nevertheless, growing student focus and widespread protests on university campuses about the cost of education and the rising cost of textbooks, as well as

the need to transform and decolonize the curriculum, is likely to raise the profile of OER policy debates.

With publishers moving in many of the same directions, the next decade of curricular change looks relatively clear. The main questions relate to the mix of university and publisher control over the ecosystem, the evolution of informal practices where this control fails, and the degree to which the resulting systems internalize the cost of materials to students and address their need for locally grounded materials. As student demonstrations broke out again in 2016, it was clear that the promises of post-apartheid education, much less redress of the larger legacies of apartheid, remain unmet.

Nevertheless, the emerging new models, with their emphasis on flexibility and access, might come closer to providing an ecology of access to learning materials that better accommodates what students themselves described as their reality—one that retains the flexibility of materials drawn from multiple sources and adapted to local contexts, while at least diminishing the ruthless process of selection and deprivation dictated by economic need.

Conclusion

Student protests since 2014 have introduced enormous volatility into the South African higher education system as well as the learning resources ecosystem. While embedded in current realities, the #RhodesMustFall protests at the University of Cape Town in 2015 that demanded the removal of a statue of a colonial-era icon raised echoes of many of the arguments of the 1970s student activists for the transformation and decolonization of the universities and the incorporation of a more Afrocentric curriculum. There followed the #FeesMustFall movement, addressing the financial crises of many students, unable to afford books, accommodation, food and fees, and criticizing the failures of NSFAS, including the exclusion from graduation of students who could not pay their student loans.

It is clear that the conundrum of providing learning materials in South African universities extends far beyond the materials themselves and beyond supply chains, to the complex ecologies of access in general shaped by apartheid separatism and present-day policy disconnects. Student access to resources has been the victim of vacillation between a policy tradition grounded in the "alternative curriculum" principles of anti-apartheid publishing and a developmental approach, and one grounded in a neoliberal market-oriented view of the role of higher education. Despite repeated efforts to build a national education agenda around the former, persistent economic difficulty has been

a more fertile climate for imposing and rationalizing the latter view, helping provoke the current protests.

One result of the neoliberal approach is the expectation that universities should be, to an extent, self-funding, with student fees as an important part of this mix. This has been a particularly unrealistic expectation in South Africa as the system expands to serve the disproportionately poor and often underprepared majority population. Expansion of the NSFAS—the national student bursary and loan scheme—has been the primary policy response, but an inadequate one given the scale of student needs.

These problems are exacerbated by the variety of market failures in the book publishing and retailing sectors, including unaffordably high prices and chronic mismatches of supply and student demand, particularly in regard to international textbooks. In this context, many students ration their limited financial resources, making judgments about which books are most important for their studies and doing without the others. They employ a combination of strategies for accessing resources that extends well beyond the commercial market, including the sharing of resources within and across cohorts, photocopying, and relying on downloading—generally with little regard to legality.

These arrangements also reflect the segmented nature of the international market, which is structured by parallel importation prohibitions in copyright law. These prohibitions allowed originating publishers to provide discretionary, cheaper editions for developing countries, while preserving the higher-cost U.S. and UK markets, but they also significantly limited the bargaining power of small-market countries. The *Kirtsaeng v. Wiley* case in the United States in 2013 has begun to unravel these arrangements, leading to market instability and higher prices on imported books as new pricing models are put in place.

The complexities of the system have been deeply shaken by the issues raised during the student protests. The questions being raised refer very directly to the question of student learning resources and their appropriateness to the African context in which their users live. While the university presses have produced readers and republication of the works of African thinkers, the bigger questions of the reform of the university systems and the curriculum remain in abeyance. There is a very real risk of a general failure of the higher education system as a whole, in the face of underfunding and misalignment of policy directions with student aspirations.

It is perhaps serendipitous that publisher strategies have been changing in ways that better support this variegated landscape. Digital delivery is improving across the sector and some of the larger publishers are becoming—in key respects—educational

technology companies, focused on not just textbooks and materials but also broader provision of learning design, support, assessment, and evaluation systems and services.

With countries like South Africa facing both growing student numbers and a rapid technological adoption curve with respect to computers, bandwidth, and devices, there are many indications that the developing world is a focus of these developments. In the short term, however, the numerous digital efforts have contributed to the instability of the market overall and to chaos in book pricing in particular. The variety of pricing models; delivery systems; digitized, born digital, and digitally supplemented products; bibliographical management systems; and feedback mechanisms from faculty—all present students with confusing and complex decisions.

Open educational resources look to be likely beneficiaries of these pressures on the system. Although currently fragmented in South Africa, in both policy and practices, OER presents an obvious opportunity in a system that needs less costly, more flexible, and legal solutions. If the current trends hold, solutions will likely emerge from partnerships between government, universities, educational NGOs, and the commercial sector, and ideally will produce effective digital delivery systems that accommodate the wide range of underserved paths through South African higher education.

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Notes

1. The segregation of education in schools had already taken place with the passing of the Bantu Education Act in 1953.

2. See http://www.ufh.ac.za/About/Pages/History.aspx.

3. In the 1960 census, for example, the "Bantu" population was recorded at 68.3 percent of the total population, with the white population at 19.3 percent.

4. These risks were not hypothetical. A number of dissident academics were assassinated by the apartheid regime, including philosopher Rick Turner of the University of Natal in 1978 and anthropologist David Webster of the University of the Witwatersrand, shot in 1989.

5. This type of publishing faded quickly after the end of apartheid. It proved to be both strongly tied to the culture of opposition and highly vulnerable to changes in the book business—especially the consolidation of bookselling in mega-bookstore chains, which we will discuss later.

6. Personal communication, 2017.

7. Members of the Congress movement were the African National Congress, the South African Congress of Democrats, the South African Indian Congress, and the Colored People's Congress.

8. The Freedom Charter was adopted in Kliptown in 1955, after wide-ranging consultation, collecting input from members across the country. http://www.anc.org.za/show.php?id=72.

9. Constitution of the Republic of South Africa, 1996, Chapter 2, Bill of Rights, clause 29 (1), http://www.gov.za/documents/constitution/chapter-2-bill-rights#29.

10. Interestingly, in his analysis of apartheid intellectual traditions, Allsobrook describes the focus on the ISI indexes as a continuation of the positivist thinking underpinning apartheid, with its emphasis on metrics (Allsobrook 2014).

11. Official statistics linked to the national census tend to provide figures that are some years out of date, and it is the commercial analysts that are compiling more up-to-date figures (for example, BusinessTech in October 2015, https://businesstech.co.za/news/general/101412/here-are-south-africas-26-universities/).

12. See https://businesstech.co.za/news/general/101412/here-are-south-africas-26-universities/.

13. Juta also helped begin a tradition of local legal publishing that has set South Africa apart from the many other British ex-colonies that rely on British legal publications. This difference is driven by the fact that law in South Africa reflects not only the British colonial heritage but also the Roman-Dutch tradition of the earlier Dutch colonial regime. See, for example, https://juta.co.za/media/filestore/2013/06/JutaHeritage.pdf.

14. See http://www.vanschaiknet.com/companyhistory.

15. UNISA's early growth as an education provider was associated with Afrikaner conservatism, which gave its academics a dominant role in black universities in the apartheid years. Later, it benefited from the fact that it was the educational provider to many political prisoners who subsequently took up senior roles in the new government, and managed to progressively transform its conservative reputation.

16. Although the cost of textbooks has a variety of determinants, the main price driver is the small size of the local market. The Cost of Books Study reports that average South African print runs are relatively low (at 2,000 copies and below), with only 30–50 percent of books going to reprint. This problem is exacerbated by the low penetration of South African textbooks across African borders due to distribution and currency exchange barriers (Gray 2000). Still another contributor is the relatively high author royalties for textbooks, which as a percentage of net sales rose to 17.3 percent in 2011.

17. For a clear and succinct account of the arcane sphere of territorial rights and parallel importation, see Andrew Rens's chapter on the "Legal Context for Publishing in South Africa and Uganda," in the report on the 2010 IDRC-funded project on Publishing and Alternative Licensing in Africa, https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/45649/132110.pdf?...1.

18. See https://arstechnica.com/tech-policy/2012/10/a-supreme-court-clash-could-change-what-ownership-means/.

19. For an analysis of the judgment, see a KEI posting by Krista Cox, https://www.keionline.org/node/1686; for a more academic discussion of the issues prior to the Supreme Court decision, see John Mitchell, "Trans-Pacific Partnership proposes Suppression of Price Competition," February 21, 2012, in the Infojustice.org discussion forum, http://infojustice.org/archives/8305.

20. See *Bookmark* 35 (Sept.–Nov. 2013): 7, https://www.sabooksellers.com/wp-content/assets/BookmarkVol35.pdf.

21. StatsSA 2014, 53.

22. Local branches of international companies in South Africa, such as Pearson and Oxford University Press, publish locally a number of titles by South African authors or editors, as well as hold stock of and distribute imported books from their overseas branches The books published by the local publisher are included as locally produced books in the statistics, while books published by the overseas branches and held in stock by the local publisher are treated as "imported titles." Reported separately in the statistics are books imported directly by booksellers from other overseas publishers and not held in stock in South Africa.

23. The Publishers Association of South Africa (PASA) produces annual statistics reflecting the activities of its membership, which include the majority of the large industry players and a number of smaller publishers. These statistics are then adjusted to provide a picture of the industry in its entirety, including nonmembers. The PASA turnover figures reflect publisher revenues, not the gross sales revenue generated in the marketplace, and retail turnover is then estimated by adding back the value of the average discount applied by booksellers. Once every three years, the South African Booksellers Association (SABA) conducts a parallel survey of the performance of its members in the bookselling industry, which provides a picture of retail sales revenue. The SABA survey adds an important element to the statistical picture, in the form of figures for direct imports of international titles, not reflected in the publishers' figures. This provides a detailed view of the whole book industry, its players and markets, industry participants, and demographics. A combined report of this kind was produced in 2011, providing an up-to-date industry-wide picture of academic publishing and bookselling in South Africa.

24. Interviews with local publishers, carried out in 2013–2014.

25. Much the same pattern is reproduced in authorship, where on an annual basis, the vast majority of authors are white. Book industry statistics for 2012 reported that only 14 percent of locally published books had black authors. Whether this is owing to the difficulty of recruiting authors to write textbooks due to a reward system organized around journal publication, as some publishers reported, or to the relative lack of seniority of black academics, or to persisting conservatism, or to some combination of factors, there is a continued misalignment of policy aspirations and author demographics.

26. See http://www.scielo.org.za/. There are currently fifty-eight journals indexed in SciELO SA. A concise account of this intervention is provided on the ASSAf web page: https://www.assaf.org.za/index.php/programmes/scholarly-publishing-programme/107-scholarly-publishing-programme.

27. For an analysis of this program, see the report on its fifteen-year development: http://scielo.org/php/level.php?lang=en&component=42&item=31.

28. Historically, books were rewarded at a much lower level in this incentive system. However, as a result of a survey of scholarly book publishing carried out by the Academy of Science of South Africa, the subsidy for peer-reviewed scholarly books is due to rise considerably from 2015 onward.

29. For a case study of the conceptualization, implementation, and strategies of the HSRC Press, see Gray, Van Schalkwyk, and Bruns 2004; to be found at: http://www.codesria.org/spip.php ?article752&lang=en.

30. See http://www.gov.za/address-minister-science-and-technology-naledi-pandor-mp-book-launch -hsrcs-state-nation-1994-2014.

31. The African Copyright and Access to Knowledge research program, in which the author played a part.

32. Section 3 of the Copyright Regulations, 1978, as published in GN R1211 in GG 9775 of 7 June 1985 as amended by GN 1375 in GG 9807 of 28 June 1985.

33. It is to be noted that fair dealing is a narrower concept than that of fair use set forth in U.S. copyright legislation.

34. The African Copyright and Access to Knowledge study of the South African research program provided the following summary of the limitations and advantages of the South African legislative environment in relation to access to learning materials: (1) The ambiguities in the provisions for copying for educational purposes detracts from the potential of these provisions to provide effectively for L&Es for educational access. (2) The Act fails to provide for fair dealing in the case of digital works. (3) There is no provision for the scanning and digitization of works for access by the visually impaired (De Beer et al. 2010). (South Africa has not yet ratified the Marrakesh Treaty, which was concluded in 2014.)

35. The author of this report was involved in these discussions in her capacity as then-director of the Wits University Press.

36. See http://ip-unit.org/wp-content/uploads/2013/10/IP-Policy-Academics-Submission_final17 1013.pdf.

37. DALRO was originally a privately owned company but by the 1990s had become a subsidiary of the South African Music Rights Organisation (SAMRO).

38. See http://www.rcips.uct.ac.za/rcips/ip/copyright/bla (UCT contracts office guidelines on the DALRO license).

39. There are, in addition, limits set on the extent of copying allowed from individual books and journals. The limits for copying and the terms that apply are set out in university guidelines: for example, Wits University, http://libguides.wits.ac.za/c.php?g=145347&p=953449; and UCT, http://www.rcips.uct.ac.za/rcips/ip/copyright/bla. Transactional licenses for extracts from publishers who have opted not to be included in the blanket license have to be negotiated individually with DALRO, at a pre-agreed page rate for publication-by-publication licensing.

40. Listed as Submission 27, from the University of Cape Town in the Commission report, 113.

41. See http://www.nsfas.org.za/.

42. At 2015 exchange rates.

43. Six weeks into the second semester of the 2014–2015 academic year, 2,500 students at the University of Fort Hare campus in Alice who qualified for an NSFAS grant had not received funds. Their Student Representative Council was told there was no money. University management has come under fire from students for charging fees that exceed NSFAS allocations, including a 100 percent increase year on year for residence. Cost of a shared residence for one year on campus in 2013 was R9,000; in 2014, it was R19,000.

44. See https://mg.co.za/article/2014-09-15-tut-management-suspends-src.

45. Some publishers indicated that South African textbooks do not even appear on torrent sites—another dimension of the small-market problem that shapes South African publishing. The publishers' association has begun tracking South African textbooks in international torrent sites, and has signaled readiness to issue takedown notices if and when necessary.

46. See http://jutaacademic.co.za/articles/winners-of-2012-student2book-campaign-announced-at-vut.

47. Author interview with publisher.

48. A questionnaire containing 63 questions was distributed during, before, and after lectures (with lecturer permission) resulting in 1,008 responses. The questionnaire was developed with colleagues across five sites and was divided into sections on access to technology, acquisition of materials, and library databases and online platforms. The survey analysis was undertaken by the data specialist serving the broader project. After the surveys had been completed, six student focus groups were run, two each in three disciplinary areas respectively: law, health sciences and communication studies. Forty-two students were interviewed: twelve male, thirty female. All remained anonymous and their responses were coded by disciplinary grouping, focus group number, and student number. Coding was undertaken by a research assistant and the principal researcher. Among the major demographic features of the survey group: 99 percent were full-time students; of which 50 percent were in their first year, and 67.6 percent said that their first language was English, with the remainder citing predominantly other South African languages. In terms of household income, the students were reasonably well spread across the levels, with a quarter in the highest bracket and a quarter in the lowest bracket. Just under two-thirds said that their parents were funding their studies. The percentage of students surveyed who reported being on financial aid (16.9 percent) was close to the overall percentage in the university (15.6 percent).

Nearly all of the students, except four, owned a cell phone (99.6 percent), a reflection of the high levels of cell phone use in South Africa. Of those with a cell phone, 94.7 percent had Internet access via their phones.

49. Only three students reported costs of over $1,000 (R10,000).

50. The plight of bursary students in the face of this facet of market failure cited here emerged in focus groups with students and in media reports on problems with the NFSAS student bursary scheme.

51. The merger of the two main e-retailers, Kalahari.com and Takealot, approved by the Competitions Commission in late 2014 and have subsequently been implemented. This has accelerated the development of the online market for textbooks, in part via an expansion of alternative payment methods.

52. Our sample drew on a relatively privileged university community on a city campus, and so demonstrated high levels of Internet access and ownership of computers and devices. Of the 1,008 students surveyed, 930 owned a laptop; 276 had a tablet or e-reader, and 908 had Internet access at home. Internet access on campus was available to all the respondents. In remote universities, all of these numbers would likely be significantly lower.

53. When asked which illegal resources they had used, survey respondents cited two categories of websites predominantly. Direct download sites comprised 30 percent of the answers, with Megaupload, 4shared.com, and Library.nu (the book downloading site) receiving the most mentions. Peer-to-peer sites such as torrent providers were also popular, accounting for 37.8 percent of the total, with the sharing software D++ appearing in 16.2 percent of the responses and the well-known Pirate Bay site taking 9.2 percent of the specific answers. The dominance of the dated DC++ file sharing protocol—a Napster-like precursor of BitTorrent that makes use of a centralized server for indexing content—is somewhat surprising. Although we can only speculate, its popularity may reflect the international bandwidth constraints under which South African Internet users labored for much of the past decade. As a centralized archival system, DC++ can be set up and efficiently run on the South African side of the bottleneck.

54. This explosion of sources has also had a secondary effect. In contrast to copyright infringement, fears of inadvertent plagiarism were common and sometimes quite strong. Remarked one student, "I am more worried about university consequences than legal consequences, because a lot of times I like pray with my Turnitin report [an automated plagiarism detection service] just like "please don't be red, please don't be red." So I'm more worried about that, getting called in for plagiarism than going to jail."

55. See http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=27721.

56. Including OER University and OER Africa, a project initiated by the South African Institute of Distance Education (SAIDE).

57. Young 2013.

58. See, for example, http://www.thebookseller.com/news/profits-fall-penguin-momentous-year.

59. See Young 2013.

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