Translating Educational and Cultural Literacy Works under Berne, *Ius Cogens*, and Linguistic Genocide

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Abstract

The lack of works for educational and cultural literacy purposes in their own languages threatens the cultural survival of many vulnerable minority and indigenous groups worldwide. Translation could satisfy related access needs. A strict reading of international copyright law, however, does not facilitate the translation of works into other languages. Yet, it is often forgotten that, in accordance with the integration rule of treaty interpretation, the *Berne Convention*, and other relevant international intellectual property instruments, would have to be read in the light of internationally protected linguistic human rights in education and for cultural literacy. This mechanism could go some way towards assisting the easier translation of (parts of) works for the stated purposes into other languages. The argument made in this article, however, is that a harmonious reading of existing international copyright law with international human rights law cannot go as far as to sufficiently resolve the access needs of vulnerable groups speaking an endangered language, insofar as translated texts are concerned. In fact, it is contended that the existing regulation of translation under international copyright law is so inimical to the survival of vulnerable groups and their languages that it must be held to promote cultural or linguistic genocide. For that reason, the relevant copyright rules must be considered to conflict with *ius cogens*, that is, peremptory norms of international law, and to be void in their application to neglected languages. The article makes suggestions as to how countries could design national copyright law regulating translation rights and limitations and exceptions in a way that facilitates translation generally, and into neglected languages specifically. These suggestions are based on a reappraisal of the true character of translation, which must be seen to be highly transformative in nature and resulting in the creation of autonomous new works.

Keywords

Berne Convention; copyright; translation; languages rights; linguistic human rights in education; cultural rights; minorities; indigenous peoples; endangered/neglected languages; genocide; cultural genocide; linguistic genocide; persecution; *ius cogens*; fair use; decolonisation

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> If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart.[**]

1 Cultural survival through translation?

> Our language is dying, that is the first sign of deterioration. Our native style of life has to be based on four elements – heritage, culture, values, language – and if you take one away it begins to break down. Then we have the symptoms of this breakdown, alcoholism and abuse.[1]

Language is an element of cultural enrichment, but it is much more than that – it is key to the cultural survival of any nation or group. As the Inter-American Court of Human Rights emphasised in *López-Álvarez v Honduras*, language is "one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture".[2] Addressing "Endangered Languages", the United Nations Educational, Scientific and Cultural Organization (UNESCO) explains that it measures language vitality and endangerment by nine criteria. One of these is "availability of materials for language education and literacy",[3] and it is here that copyright becomes an obstacle. In the same way that patents do not create an incentive to develop medicines for "neglected" tropical diseases, copyright does not incentivise publication in "neglected" languages because the relevant

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** Famous Nelson Mandela misquote. What Mandela really said was, "because when you speak a language, English, well many people understand you, including Afrikaners, but when you speak Afrikaans, you know you go straight to their hearts", said in an interview with Richard Stengel on 29 April 1993 and collected in Mandela, Hatang and Venter *Nelson Mandela by Himself* 125.

1 Randy Councillor, Ojibway, director of a detoxification centre in Ontario, Canada, himself an earlier "street-drunk", as quoted in Skutnabb-Kangas *Linguistic Genocide in Education* 139.

2 *López-Álvarez v Honduras* (Merits, Reparations, Costs) IACtHR Ser C No 141 (1 Feb 2006) para 171.

3 *UNESCO, Language Vitality and Endangerment, UNESCO Ad Hoc Expert Group on Endangered Languages* Doc CLT/CEI/DCE/ELP/PI/2003/1 (2003) 12.

markets are too small and speakers of the languages are poor. As Shaheed,[4] as (a former) UN Special Rapporteur in the Field of Cultural Rights, has pointed out in her 2014 report to the Human Rights Council, while speakers of the world's major languages could choose from among "millions of books", speakers of local languages had access to "very few".

But, that is not all – translation into these languages is also not adequately catered for by international copyright law. This would be crucial, because, where no works in the original languages are published, translations into these languages are important to satisfy educational and all other cultural literacy needs. The literature widely acknowledges that translation is of eminent importance to facilitating access to knowledge, especially in developing countries.[5] The essential purpose of this article is to demonstrate the inadequacy of existing copyright law towards facilitating translation into neglected languages, the devastating consequences thereof for vulnerable cultural or linguistic groups, and how copyright reform could address this crisis. The relevant copyright rules of the *Berne Convention* will thus be referred to (Section 2) and juxtaposed with the protective standards of language rights under international human rights law (Section 3). While the international rules on treaty interpretation mandate an endeavour of reading conflicting rules of international law "harmoniously" (presently, *Berne* in the light of international human rights law), the analysis here proceeds to pose the more fundamental question whether the existing copyright rules regulating translation do not, as it were, contribute to "linguistic" genocide, and, therefore, violate an *ius cogens* or peremptory norm of international law (Section 4). As the copyright rules concerned would be void in this case, this would open the door to newly regulating international copyright law applicable to translation into endangered languages. The discussion will assess various reform options available at the

4 *Report of the Special Rapporteur in the Field of Cultural Rights, Copyright Policy and the Right to Science and Culture* UN Doc A/HRC/28/57 (2014) para 68.

5 See, eg, Basalamah and Sadek 2014 *The Translator* 407 ("[T]ranslation's mandate is the dissemination of knowledge and the promotion of the sharing of information and cultural difference"); Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 589 (holding that translation may help solve the problem of the dearth of educational materials in African languages); Kelly *The True Interpreter* 1 (remarking that Western Europe owes its civilisation, rooted in the Roman Empire, to translation); Ketzan 2007 *Tul J Tech & Intell Prop* 221-222 (in the context of addressing the potential of machine translation, pointing out its importance to the survival of minority languages); Talagala *Copyright Law and Translation* 13 ("[D]eveloping countries need to translate these materials into the local languages. Translation facilitates access to knowledge."). There are, however, also certain dangers in naively viewing translation as being able to facilely solve all access needs in developing countries. In this regard, see Section 6, fns 131-133 and accompanying text, below.

national level, but do this adopting a wider perspective of how copyright law could, generally, facilitate translation into *any* language, and thus afford enhanced protection to recognised linguistic human rights (Section 5). Crucially, this part of the discussion incorporates insights from the field of translation studies. These insights necessitate a reappraisal of copyright's orthodox understanding that a translation is a reproduction or, at most, a close adaptation of an existing work. Finally, the importance of translation – and accordingly a reform of relevant copyright law – is emphasised from the viewpoint of achieving a decolonisation of the educational curriculum and cultural life in Africa (Section 6).

2 Copyright law under the *Berne Convention*

Article 8 of the *Berne Convention for the Protection of Literary and Artistic Works* of 1971 (hereinafter *Berne Convention* or *Berne*) accords authors the exclusive right to translate their works, but no express limitations and exceptions (L&Es) to their translation rights have been laid down.[6] Yet, in their famous commentary on the *Berne Convention*, Ricketson and Ginsburg[7] hold that *Berne's travaux préparatoires* show that there are implied L&Es allowing translation within the respective limits of the reproduction, quotation, and teaching (etc) L&Es.[8] They say, one could see translation as a form of

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6 Article 8 of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the *Berne Convention*). For analyses of the complicated history of the author's translation right in Art 8, and generally translation rights and limitations and exceptions in international copyright law, see Bannerman *International Copyright and Access to Knowledge* 100-113; Hemmungs Wirtén *Cosmopolitan Copyright* 17-67; Talagala *Copyright Law and Translation* 126-155.

7 Ricketson and Ginsburg *International Copyright and Neighbouring Rights* para 13.83.

8 Article 9(2) of the *Berne Convention* states, "It shall be a matter for legislation … to permit the reproduction of … works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author" (reproduction L&E). Art 10(1) states, "It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose…" (quotation L&E). Art 10(2) states, "It shall be a matter for legislation … to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice" (teaching L&E). Arts 9(2), 10(1) and (2) of the *Berne Convention*. The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (1995) (*TRIPS*) incorporates most substantive provisions of *Berne*, thus also the above L&Es, and also the *Berne* Appendix (discussed below). See Art 9(1) of *TRIPS*. Neither *TRIPS* nor the *WIPO (World Intellectual Property Organization) Copyright Treaty* (1996), the latter adopted to prepare copyright for the digital age, changes the "language and translation" regime created under *Berne*.

reproducing a work.[9] Alternatively, not to read such translation L&Es into *Berne* would lead to an absurd result, reducing the effectiveness of the L&Es.[10] Nevertheless, in terms of orthodox copyright law, these L&Es hardly permit the unencumbered translation of *whole* works (and subsequently the bulk distribution of cheap copies), even though this is exactly what is needed in respect of vulnerable cultural groups and their languages.[11] There exist, however, also more enlightened, generous ways of reading these L&Es that would support more extensive user rights, including as regards translation.[12] More will be said on this later.[13] However, even these ways of reading might not permit the far-reaching use that is referred to as necessary here, to satisfy the access needs of speakers of neglected languages.

Obtaining voluntary translation licences is difficult practically, and also beyond the resources of many of the language groups concerned. There is an Appendix to the *Berne Convention* of 1971, providing for a compulsory licensing scheme for developing countries that envisages translation (and reproduction) licences for whole works. Under a translation licence, a work may be translated, and copies of the translation be published.[14] However, compulsory licensing under the Appendix has been regulated in a highly

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9 Ricketson and Ginsburg *International Copyright and Neighbouring Rights* paras 11.35 ff, 13.83. Considering translations to be mere reproductions of the original works is problematic, however. In this regard, see Section 5, fns 85-97 and accompanying text, below.

10 Ricketson and Ginsburg *International Copyright and Neighbouring Rights* para 13.83.

11 The very formulation of the L&Es (see fn 8 above) could be seen as making it clear that the scope of respective user rights is clearly limited. Furthermore, international copyright law now postulates the so-called three-step test, as first contained in Art 9(2) of the *Berne Convention*, as a *general* measure against which the legitimacy of all L&Es in national law must be assessed, to guard against the erosion of the rights of copyright holders. Hence, L&Es must (1) be confined to "certain special cases", which (2) "do not conflict with a normal exploitation of the work", and (3) "do not unreasonably prejudice the legitimate interests of the right holder". See Art 13 of *TRIPS*. The fact that the test is interpreted notoriously restrictively (see Geiger, Griffiths and Hilty 2008 *IIC* 711 (Preamble of the Declaration on a Balanced Interpretation of the "Three-Step Test" in Copyright Law)) does not make the argument in favour of the translation of whole works easier. As has been observed, it is a typical feature of L&Es that they are "rarely … sufficient to meet the development-related challenges – such as bulk access to educational works – facing many least-developed and developing countries". Okediji 2018 *NYU J Int L & Pol* 34. "Bulk access" means *many* (cheap) copies of *whole* works, including in translation.

12 These interpretations are based on an alternative way of reading the three-step test of international copyright law. See Section 5, fns 116-120 and accompanying text, below.

13 See Section 5 below.

14 Article II of the Appendix to the *Berne Convention* regulates translation licences. Reproduction licences are directed at the supply of reasonably priced copies of a work in a country. Art III of the Appendix regulates reproduction licences.

restrictive manner.[15] Licences can thus be obtained for purposes of organised education, but not for informal education or broader cultural literacy purposes.[16] It is important, however, that neglected languages would also be protected beyond the formal education context. Reproduction licences cannot be granted in respect of translations made under a translation licence.[17] Hence, the existence of any such translation produced under a compulsory licence in one country would be of little relevance in another, where the translation might be needed too, and easily reproduced. A separate translation licence would have to be applied for here (and the work translated again). Neither compulsory licence extends to the export of copies.[18] This precludes the publication or reproduction of a translation in one country, that may have better capacities to produce or reproduce such a translation, and subsequent supply in another country lacking such capacities. Adopted in 1971, it is also unclear whether the *Berne* Appendix applies to digital works.[19] Compulsory licences still require "just" compensation to right holders.[20] Moreover, the administrative procedures to be followed to obtain a licence are complex and burdensome. The Appendix imposes waiting periods of three years (one year for any language "not in general use in one or more developed countries") in the case of translation licences, and, depending on the type of work, of three, five, or seven years in the case of reproduction licences, before a licence can be obtained.[21] An attempt must first be made to notify copyright holders and seek their authorisation.[22] Where authorisation cannot be secured, copyright holders are then afforded a further grace period within which they may supply a translation or reasonably priced copies of a work.[23] Only if they fail to do so, can the compulsory licence be granted.[24] For all these reasons, the Appendix has never worked. In fact, developed countries probably never wanted it to work.

15 For detailed accounts of this restrictive regulation, see, eg, Basalamah 2000 *IDEA: J L & Tech* 511-522; Silva 2013 *J Copyright Soc'y USA* 589-612; Talagala *Copyright Law and Translation* 150-155.

16 Arts II(5) and III(2)(a) of the Appendix to the *Berne Convention*.

17 Art III(5)(i) of the Appendix to the *Berne Convention*.

18 Art IV(4) of the Appendix to the *Berne Convention*.

19 See, eg, Silva 2013 *J Copyright Soc'y USA* 607-612.

20 Art IV(6)(a)(i) of the Appendix to the *Berne Convention*.

21 Arts II(2)(a), (3) and III(3) of the Appendix to the *Berne Convention*. A reproduction licence might thus be relevant, where a translation published by the copyright holder or with his or her authorisation is sought to be made available in a certain country where it is not so available (at a reasonable price).

22 Art IV(1) and (2) of the Appendix to the *Berne Convention*.

23 Arts II(4)(a), III(4)(a) and (b) of the Appendix to the *Berne Convention*.

24 Arts II(4)(b) and III(4)(c) of the Appendix to the *Berne Convention*.

There is widespread scholarly consensus that the Appendix has been a gross failure.[25]

Now that the relevant rules on language and translation of one international legal regime, international copyright law, have been described, the rules on language rights of international human rights law, the other crucial regime of international law at stake here, will be identified.

3 Linguistic human rights, in education, and for cultural literacy

According to the United Nations (UN), about 6,700 languages are believed to exist today. Of these, over 3,000 are in serious danger of disappearance. Indigenous peoples' languages represent at least 4,000 languages and most of these are seriously endangered.[26] Close to 40% of the world's population do not have access to education in their mother tongue.[27] Just 7% of languages – including the "global" or known languages – are used in education, 93% are not![28] Copyright clearly constitutes an aggravating factor. As for Africa, far more than 90% of the literature currently available is in the colonial languages.[29] In South Africa, for example, most locally-produced books are in English or Afrikaans.[30] Only about 9% of revenue from book sales derives from books in all (nine official) African languages combined.[31] School textbooks in African languages account for roughly 15% of books sales in the education books

25 See, eg, Chon 2007 *UC Davis L Rev* 829, 835 (remarking that the Appendix "contains provisions so complex and arcane that very few developing countries have been able or willing to take advantage of them", and further that its provisions are unworkable, unfair, and require compensation for educational use that is covered by fair use in the USA); Okediji *Limitations, Exceptions and Public Interest Considerations* 15 ("By all accounts, … the Berne Appendix … has been a failure."); Silva 2013 *J Copyright Soc'y USA* 590 ("[T]he Appendix comes across as an obsolete, inappropriate, bureaucratic, and extremely limited attempt to provide an air valve for developing countries.").

26 *OHCHR, Human Rights Legal Framework and Indigenous Languages, International Expert Group Meeting on Indigenous Languages* Doc PFII/2008/EGM1/15 (2008) para 2. According to Rymer 2012 *National Geographic* 60, "[o]ne language dies every 14 days".

27 Walter and Benson "Language Policy and Medium of Instruction" 282.

28 Walter and Benson "Language Policy and Medium of Instruction" 283.

29 Prah "The Difficulties of Publishing in Africa" 302.

30 Le Roux, Tshuma and Harvett *South African Book Publishing Industry Survey 2021-2022* 6.

31 Le Roux, Tshuma and Harvett *South African Book Publishing Industry Survey 2021-2022* 7. With Afrikaans and English, there are eleven official spoken languages in South Africa.

sector.[32] General adult and child fiction and non-fiction published in African languages accounts for less than 1% of book sales in the "general reader" books sector.[33]

It is well known today that the duration of teaching *in* (not only *of*) the mother tongue is the most important factor for the educational and life success of students.[34] As Skutnabb-Kangas,[35] one of the world's most renowned linguists, explains, the ideal is multilingual education, with mastery of the mother tongue at its heart. In a 2008 study to the UN's Permanent Forum on Indigenous Issues, Dunbar and Skutnabb-Kangas[36] elucidate that, while there should be "additive" education, where children "learn their mother tongues well, in addition to learning a dominant language (and other languages) well too", in practice, we often witness "subtractive" education, where children "learn a dominant language at the cost of the mother tongue which is displaced, and later often replaced by the dominant language. Children undergoing subtractive education, or at least their children, *are effectively transferred to the dominant group linguistically and culturally*".[37] In Africa, for instance, most children start school in a foreign language.[38] UNESCO has adopted a *Convention for the*

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32 Le Roux, Tshuma and Harvett *South African Book Publishing Industry Survey 2021-2022* 12 (based on revenue). As it were, fewer than 4% of all titles in the education books sector are published in African languages. Le Roux, Tshuma and Harvett *South African Book Publishing Industry Survey 2021-2022* 11.

33 Le Roux, Tshuma and Harvett *South African Book Publishing Industry Survey 2021-2022* 27 (based on revenue).

34 See, eg, UNESCO *The Use of Vernacular Languages in Education* 11 (already in 1953 pointing out that, psychologically and sociologically speaking, "the best medium for teaching a child is his mother tongue"); *Language Rights of Linguistic Minorities: A Practical Guide for Implementation (UN Special Rapporteur on Minority Issues, 2017)* 7 ("When the mother tongue is used as the medium of instruction for at least 6-8 years, the results are impressive: enhanced self-confidence, self-esteem and classroom participation by minority children, lower dropout rates, higher levels of academic achievement, longer periods in school, better performance in tests and greater fluency and literacy abilities for minority (and indigenous) children in both the mother tongue and the official or dominant language" (footnotes omitted)). Generally, for an account of the research demonstrating the importance of mother tongue education for the educational and life success of children, see, eg, Baker *Foundations of Bilingual Education and Bilingualism*; Cummins *Language, Power and Pedagogy*; Skutnabb-Kangas *Linguistic Genocide in Education*.

35 Skutnabb-Kangas *Linguistic Genocide in Education* 567-649.

36 *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) paras 6, 11 n4.

37 *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) para 6 (emphasis added).

38 Ouane and Glanz *Why and How Africa Should Invest in African Languages* 4.

Safeguarding of the Intangible Cultural Heritage in 2003, and a *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* in 2005.[39] Yet, these have very isolated protective or only broadly promotional measures in mind, respectively, but do not "actually impose any legal obligation on governments to take concrete steps for indigenous languages on their own territory".[40]

However, international human rights law does protect linguistic human rights. Article 14 of the *UN Declaration on the Rights of Indigenous Peoples* of 2007 protects the right to education in the mother tongue for indigenous children in public and private schools, within and outside indigenous communities.[41] The Organization for Security and Co-operation in Europe's (OSCE) *Hague Recommendations Regarding the Education Rights of National Minorities* of 1996, purporting to be a consolidation of international legal obligations relating to the education rights of national minorities, protect the right to mother tongue education of persons belonging to national minorities. Apart from teaching the mother tongue and other languages as subjects, in primary education the curriculum should essentially or mostly be taught in the minority language, in secondary education a substantial part of the curriculum should be taught in the minority language, and in tertiary education there should be access to teaching in minority languages in accordance with need and student numbers.[42] If these instruments are considered "just" soft law, Article 30 of the

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39 *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005).

40 De Varennes and Kuzborska 2016 *Int J Minor & Group Rts* 288-289.

41 Article 14(1) states, "Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning." Art 14(3) states, "States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language." Art 14(1) and (3) of the *UN Declaration on the Rights of Indigenous Peoples* (2007).

42 Recommendations 12, 13 and 17 of the OSCE's *Hague Recommendations Regarding the Education Rights of National Minorities* (1996). International instruments protecting the rights of (members of) minorities usually (seem to) offer states a choice to *either* offer teaching in *or* of the mother tongue. See, eg, Art 4(3) of the UN's *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* (1992) ("States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue."); Art 14(2) of the Council of Europe's *Framework Convention for the Protection of National Minorities* (1995) ("[T]he Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to … minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language."). However, in

UN *Convention on the Rights of the Child* of 1989 guarantees the right of minority and indigenous children "not to be denied" the right, in community with other members of their group, to use their own language.[43] In a General Comment on the rights of indigenous children, the Committee on the Rights of the Child, the independent expert treaty body supervising implementation of the Convention, has held that, to implement this right, "education in the child's own language is essential".[44]

If the language model of the *Hague Recommendations* has essentially been devised for minority (or indigenous) children and young adults, its logic applies more generally to all persons in education, also those speaking the state or dominant language at home or choosing it in education. The Explanatory Note to the Hague Recommendations makes it clear that neither teaching in the state language nor in the minority language only is in accordance with international law – an appropriate mix of languages is required.[45] Bilingual or multilingual education is needed for all at all levels. UNESCO thus emphasises that it "supports bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies".[46] The organisation holds that, on leaving school, students should have "a working knowledge of three languages", namely, the mother tongue, the official/national language, and one or more foreign languages. This constitutes "the normal range of practical linguistic skills in the twenty-first century".[47]

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the light of today's knowledge of the importance of mother tongue education for any person's success in education and life (see fns 34-35 and accompanying text above), "[t]eaching in *and* of the mother tongue must be offered. The principle of the *effective* protection of human rights justifies the more comprehensive interpretation" of provisions such as the above. Beiter 2023 *Int J Hum Rts* 443.

43 Article 30 of the *Convention on the Rights of the Child* (1989).

44 *ComRC, General Comment No 11: Indigenous Children and Their Rights under the Convention* UN Doc CRC/C/GC/11 (2009) para 62.

45 OSCE "Explanatory Note – Hague Recommendations" 14. This mix should even be reflected at individual subject level. The latest research on language of instruction shows that "translanguaging" – the judicious use (dynamic "mix") of the home language with the target language – not only helps learning a second language, but also creates "a more emotionally grounded learning environment" for students. See, eg, Back, Han and Weng 2020 *Lang & Educ* 387-406 (furnishing evidence of how translanguaging plays a key role in reducing anxiety and improving acquisition of content); Patterson and Gardyne 2022 *Environ Sci Proc* 1-9 (similarly providing evidence of how translanguaging helps teachers connect with the culture of students, ensure the latter's emotional well-being, explain abstract concepts in an inclusive way, and enhance engagement in learning).

46 Principle II of the *UNESCO Guidelines on Language and Education* (2003).

47 Principle II(I) of the *UNESCO Guidelines on Language and Education* (2003).

Education in minority or indigenous languages requires textbooks in those languages. Many studies have shown that the availability of books is particularly consistently associated with higher levels of achievement, when compared with other potential correlates of school achievement.[48] Moreover, textbooks must be in a language understood by students and teachers for them to be effective.[49]

However, language rights are also relevant for cultural literacy purposes beyond education. Article 15(1)(a) of the *International Covenant on Economic, Social and Cultural Rights* of 1966 protects the right to take part in cultural life.[50] In a General Comment on this provision, the Committee on Economic, Social and Cultural Rights, the UN's independent expert body supervising implementation of this instrument, holds that this covers access to a way of life associated with the use of one's language. Culture includes literature and other information in one's language.[51] Along the same lines, Shaver[52] argues that there is a "human right to read" which also encompasses the availability of reading materials in minority languages.

The next section examines the interaction of the relevant rules on language and translation of international copyright law, on the one hand, with the rules on language rights of international human rights law, on the other, further contemplating the consequences of the fact that some rules of international law protecting vulnerable cultural groups enjoy a superior status as *ius cogens* under international law.

4 Harmonious reading, *ius cogens*, and linguistic genocide

International copyright law needs to be read in the light of international human rights law. This follows from the principle of systemic integration applicable to

48 See Read *Where Have All the Textbooks Gone?* 33 (referring to this fact).

49 Read *Where Have All the Textbooks Gone?* 33. See also, eg, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No 3: The Language Rights of Persons Belonging to National Minorities under the Framework Convention* Doc ACFC/44DOC(2012)001 rev (2012) para 77 ("The Advisory Committee considers the availability of textbooks in minority languages … an indispensable element for providing quality education."); Principle I(II) of the *UNESCO Guidelines on Language and Education* (2003) ("The production and distribution of teaching materials and learning resources and any other reading materials in mother tongues should be promoted.").

50 Article 15(1)(a) of the *International Covenant on Economic, Social and Cultural Rights* (1966).

51 *CESCR, General Comment No 21: Right of Everyone to Take Part in Cultural Life (Art 15(1)(a) of the ICESCR)* UN Doc E/C.12/GC/21 (2009) paras 13, 15(b), 16(a), (b) and 49(b).

52 Shaver 2015 *Colum J Transnat'l L* 1.

the interpretation of treaties in international law.[53] In this sense, linguistic human rights could go some way towards tempering the harsh effects of Article 8 of *Berne* through "ameliorative" construction – definitely supporting a reading *à la* Ricketson and Ginsburg,[54] in terms of which the reproduction, quotation, and teaching (etc) L&Es would cover the right to use the work either in its original or in a different language – potentially even to a significant extent. But international law does not know any formal hierarchy of norms. Although a "harmonious reading" of different rules of international law must accord "weight" to various norms in accordance with their respective normative force,[55] copyright law (including the three-step test)[56] cannot simply be displaced by human rights norms. In consequence, satisfying bulk access needs of minority and indigenous groups – as here, distributing multiple (and affordable) copies of whole works in translation – would, if not still impermissible, at any rate be subject to a heavy and continuous burden of justification.

However, the author wishes to make another point here. There is an exception to the rule of the absence of formal hierarchy in international law: a treaty (provision) (but also, for example, an obligation created by an act of an international organisation) may not conflict with a peremptory, an *ius cogens* norm of international law. These are norms of general (usually customary) international law,[57] which, because they "reflect and protect fundamental values of the international community",[58] are regarded by the international community of states to be of such importance that no derogation from these is

53 See Art 31(3)(c) of the *Vienna Convention on the Law of Treaties* (1969) (When interpreting a treaty, "[t]here shall be taken into account, together with the context … any relevant rules of international law applicable in the relations between the parties".).

54 For the view of Ricketson and Ginsburg, see Section 2, fns 7 and 9-10 and accompanying text, above.

55 *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission* UN Doc A/CN.4/L.682 (2006) paras 473-474. Ultimately, there do exist "relations of superiority and inferiority" between norms of international law (para 407). For instance, obligations *erga omnes* (ie, obligations owed to the international community as a whole) should be accorded significant weight, as they are "undoubtedly important obligations" (para 380). It has been said of human rights obligations generally that they constitute obligations *erga omnes*. Seiderman *Hierarchy in International Law* 145.

56 On the three-step test of international copyright law and strict and generous interpretations thereof, see Section 2, fns 8 and 11 and accompanying text, above, and Section 5, fns 116-120 and accompanying text, below.

57 *ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law* (Jus Cogens)*, with Commentaries* (2002) (hereinafter ILC Draft Conclusions on *Jus Cogens*) Conclusions 4(a) and 5(1).

58 ILC Draft Conclusions on *Jus Cogens* Conclusion 2.

permitted.[59] They "are universally applicable and are hierarchically superior to other rules of international law".[60] Under the *Vienna Convention on the Law of Treaties* of 1969 such a conflicting treaty (provision) is void.[61] Does *ius cogens* have any relevance in the field of international copyright law? *Ius cogens* is a fairly restricted category, covering notably the prohibition of aggression, of crimes against humanity, of racial discrimination and Apartheid, of slavery, of torture, the basic rules of international humanitarian law, and the right of self-determination.[62]

The prohibition of genocide also constitutes *ius cogens*.[63] Now, a cultural group is not only destroyed by its physical extinction – the denial of cultural rights, including linguistic human rights, may destroy a group as well. This could be termed "cultural genocide" or "ethnocide". The terms "genocide" and "ethnocide" are not new, having been coined in 1944 by Raphael Lemkin, the Jewish-Polish lawyer who "initiated" the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948. Under Article II(e) of the *Genocide Convention*, genocide includes the "forced transfer" of children of one ethnic or cultural group to another, if done with the "intent to destroy" the group.[64] This could be read to include a forced cultural or linguistic transfer intended to destroy the group "socially". While the concept of cultural genocide was contemplated at the time of drafting the *Genocide Convention*, it was deliberately decided not to incorporate it (expressly) in the Convention because some "advanced" countries feared this might render them targets of related

59 ILC Draft Conclusions on *Jus Cogens* Conclusions 3 and 4(b); Art 53 of the *Vienna Convention on the Law of Treaties* (1969).

60 ILC Draft Conclusions on *Jus Cogens* Conclusion 2.

61 Article 53 of the *Vienna Convention on the Law of Treaties* (1969); ILC Draft Conclusions on *Jus Cogens* Conclusions 10 and 11. Similarly, rules of customary law, unilateral acts of states, or resolutions, decisions, or other acts of international organisations purporting to establish obligations under international law, but conflicting with *ius cogens*, do not, in fact, create the respective obligations. ILC Draft Conclusions on *Jus Cogens* Conclusions 14-16.

62 ILC Draft Conclusions on *Jus Cogens* Conclusion 23, Annex, (a), (c)-(h).

63 ILC Draft Conclusions on *Jus Cogens* Conclusion 23, Annex, (b).

64 Article II of the *Genocide Convention* states in full: "[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948).

genocide claims.[65] Yet, Schabas,[66] a renowned scholar of international criminal and human rights law, supports a reading of the genocide definition to cover cultural genocide, for instance, in the form of prohibiting a group's language. A literal reading of the genocide definition does allow for alternative or broader interpretations, he argues.[67] Also the German Constitutional Court has held, in the *Nikola Jorgić* case, in 2000, that the destruction of a group extends beyond its physical-biological destruction. The prohibition of genocide also protects "the social existence of a group".[68]

Similarly, Skutnabb-Kangas and Dunbar[69] argue that assimilationist approaches in education in the form of weak or absent bilingual education often amount to intentionally applying force to ensure children "will transfer" to the dominant language group of a society – such approaches amount to "linguistic genocide". The force applied assumes the form of a "use of ideas". The dominant language is glorified, the minority language stigmatised as being "traditional", "backward", and not fit for a postmodern technological information society. The dominant group promotes the idea of it – the dominant group – "helping" the minority to become "civilised", even "democratised", through

65 Schabas "Cultural Genocide and the Protection of the Right of Existence" 123-124. This notwithstanding, "even after the cultural genocide provisions had been voted out of the Convention, many drafters expressed their belief that the Convention continued to protect a group's cultural existence". Mundorff *A Cultural Interpretation of the Genocide Convention* 249.

66 Schabas "Cultural Genocide and the Protection of the Right of Existence" 122-125.

67 Schabas "Cultural Genocide and the Protection of the Right of Existence" 124. An argument for an extended interpretation could also be made on other grounds, such as giving effect to the objectives of the Convention or the need for a dynamic interpretation of legal instruments that protect human rights. Schabas *Genocide in International Law* 272.

68 BVerfG, Order of the Second Senate of 12 Dec 2000 – 2 BvR 1290/99 (*Nikola Jorgić*) para 22. Others hold that international law has not yet developed to the point where cultural genocide is covered by the crime of genocide. It has thus been argued that the international criminal tribunals with jurisdiction over genocide so far have focused on the physical and biological dimensions of the crime. Cultural genocide could, however, in appropriate cases, amount to a crime against humanity. Nersessian "The Current Status of Cultural Genocide under International Law" 71, 74-76. It has similarly been argued that cultural genocide is not a legal concept, but that, as a paralegal concept, it could serve to add an element of seriousness to the commission of other international crimes. Novic *The Concept of Cultural Genocide* 238, 243-244.

69 Skutnabb-Kangas *Linguistic Genocide in Education* xxxi-xxxiii, 202, 314, 316-317, 327, 369, 652; *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) paras 34-52.

education in its language.[70] It is thus important to appreciate that a perversely "well-intended" motive may still constitute punishable criminal intent.[71] There can also not be any question of consent to linguistic assimilation by the cultural groups concerned. The consent is a bogus or manufactured consent, a form of acquiescence to "the inevitable".[72] The destructive effects of "subtractive" education include lower achievement in education, negative socio-economic consequences (higher levels of unemployment, lower incomes, economic and social marginalisation), negative physical consequences (alcoholism, suicide), negative psychological consequences (eg, mental trauma flowing from cultural alienation), and children losing their language.[73] If education does most of the damage, the post-educational marginalisation of minority languages and their speakers in all spheres of culture and life continues or completes the linguistic genocide.

It is the *mens rea*, the mental element, of genocide that distinguishes it from other international crimes, such as war crimes or crimes against humanity. Genocide requires *dolus specialis* or special intent, in the form of the "intent to destroy" a group, to be proven.[74] There is no consensus, however, on whether the emphasis must be on the "volitional" or "cognitive" element of intent. The former enquires whether the perpetrator directed their will at destruction, the latter whether the perpetrator acted with the knowledge that destruction would be the (or, the likely, or, at even lower level, the ordinary) consequence.[75] Hence, while the former focuses on individual perpetrators and their personal motives, the latter has a collective dimension, in that it requires the existence of a policy or plan of destruction of a state or group, and knowledge on the part

70 See *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) para 44 (discussing force in the form of a "use of ideas").

71 Skutnabb-Kangas *Linguistic Genocide in Education* 327.

72 *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) para 46.

73 *Forms of Education of Indigenous Children as Crimes against Humanity? Expert Paper Prepared for the Permanent Forum on Indigenous Issues* UN Doc E/C.19/2008/7 (2008) para 20.

74 For analyses of the *mens rea* of genocide, see, eg, Behrens "The *Mens Rea* of Genocide" 70-96; Schabas *Genocide in International Law* 241-306.

75 Behrens "The *Mens Rea* of Genocide" 76. Schabas *Genocide in International Law* 254 holds that *dolus eventualis* (knowledge that destruction is a *mere possible* consequence) is not sufficient, but there are also other views in this regard. See, eg, Gil Gil 2000 *ZStW* 395; Triffterer 2001 *Leiden J Int L* 403-406.

of perpetrators of that policy or plan, to be established.[76] It has been argued that the "intent to destroy" requirement is crucial as it prevents "smoother processes of group acculturation" from qualifying as ethnocide.[77] Nevertheless, the weak or absent bilingual education policies, to which Skutnabb-Kangas and Dunbar refer, should not easily be seen as indicative of "smooth processes of group acculturation", but they often constitute organised acts of violence, such acts, as explained, in the form of a "use of ideas", directed at replacing the culture or language of one group with that of another, and performed with the knowledge that such replacement is planned to, and will (likely or ordinarily) (or even, may possibly) happen.

Even in cases where the specific *dolus* of genocide cannot be established for acts of cultural genocide, the conduct concerned would often still constitute an international crime, namely, a crime against humanity, here in the form of "persecution".[78] This exists, in this case, in the systematic, severe, and intentional deprivation of linguistic or cultural rights, based on linguistic or cultural group identity, through acts or policies entailing (social) extermination, a forcible transfer of children from one linguistic or cultural group to another, and/or knowingly causing serious injury to mental (but also physical) health.[79] Rather than an "intent to destroy", it is "discriminatory intent" that forms part of the *mens rea* of persecution.[80] Like the prohibition of genocide, the prohibition of crimes against humanity constitutes *ius cogens*.[81]

5 Copyright reform

International copyright law may well be considered complicit in achieving such linguistic genocide in relation to many vulnerable cultural groups. The *Berne*

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76 Schabas *Genocide in International Law* 242-243, 252. Schabas holds that, while such a policy or plan may not be a formal legal requirement of genocide, its existence will *effectively* have to be established (see at 243-256).

77 Novic *The Concept of Cultural Genocide* 238.

78 For some detail on the international crime of persecution, see Cerone "Persecution" 794-798.

79 "Persecution" means "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity", whether "on political, racial, national, ethnic, cultural, religious, gender …, or other grounds that are universally recognized as impermissible under international law", and when committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" and in connection with *inter alia* specified acts such as extermination, the forcible transfer of population, or "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health". Article 7(1)(b), (d), (h), (k) and (2)(g) of the *Rome Statute of the International Criminal Court* (1998).

80 Knoops Mens Rea *at the International Criminal Court* 137-139.

81 ILC Draft Conclusions on *Jus Cogens* Conclusion 23, Annex, (c).

Convention/Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*) system, as seen, does not provide for L&Es specifically and adequately catering for the legitimate translation needs of such groups. The *Berne* Appendix, including its compulsory translation licences mechanism, is dysfunctional. Translation for those that otherwise do not have such access to educational and all other cultural literacy materials in their own language as would be necessary to ensure their survival as a cultural group has consequently been rendered impossible. This could lead one to argue that Article 8 of *Berne* is void for being in conflict with *ius cogens*, at least in its generality, because it does not take vulnerable cultural groups into account. Similarly, the *Berne* Appendix conflicts with *ius cogens* insofar as its many regulatory restrictions and complex and burdensome administrative procedures render the compulsory licences mechanism useless for endangered language groups needing bulk (and affordable) access to whole works in translation.[82] Current copyright arrangements, and the persistent failure to reform them, could well be seen to reflect a plan, or to be part of a larger plan, directed at assimilating speakers of minority languages into the mainstream, implemented with the knowledge that assimilation will (likely or ordinarily) (or even, may possibly) occur (cultural genocide). At a minimum, however, where the "intention to destroy" cannot be proven, the scheme may yet reflect that measure of (intended) discrimination, to amount to persecution (crime against humanity).

One might contend that speakers of endangered languages do have access to works in the public domain that could be translated. Nevertheless, apart from the fact that this argument condones discrimination based on culture or language – as speakers of the world's major languages have access to "millions" of (more affordable) books (those originally written in their language as well as those translated into it from both copyrighted sources as well as sources in the public domain), but speakers of endangered languages only access to "very few"[83] – more important, in the context of the genocide discussion, is another consideration. The public domain includes notably works

82 Also *Berne's* so-called "ten-year regime" of Article 30(2), envisaging early translation rights for users after ten years, an arrangement referred to further below, reflects the conflict with *ius cogens*, as that specific regime has no genuine significance today anymore. See fns 100-103 and accompanying text below.

83 See fn 4 above. Hence, the analogous disparity of access to copyright-protected works that previously prevailed for the blind, visually impaired, or otherwise print disabled was considered to be of such a discriminatory nature that states, ten years ago, adopted the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* (2013), to ensure equality of access to copyright-protected works for the group concerned.

whose copyright has expired after fifty or seventy years. Especially educational textbooks will be so outdated after such a period that they cannot genuinely contribute towards securing the resilience or survival of any group. Moreover, a reliance by public education systems on what are open educational resources (OER) *ab initio*, will, for a long time to come, not constitute standard practice, also because many of the leading textbooks are still "the copyrighted ones". By the time OER are more openly embraced, many indigenous groups might have ceased to exist.

Where does this leave us? It would mean that the field of translation into neglected languages is once again effectively unregulated under international copyright law.[84] Countries could, of course, seek to fill this gap through negotiating new international rules. Against the *status quo* of there being no valid rules for translation into neglected languages, and premised further on an enlightened interpretation of the rules of the current *Berne*/*TRIPS* regime, states should newly regulate their national copyright law to achieve two goals. Firstly, their regulation of copyright should fully facilitate translation into neglected languages, notably for educational and cultural literacy purposes. Secondly and simultaneously, as a way of promoting access to knowledge more comprehensively, reregulation should be considered an opportunity to ease translation into other languages as well. Underlying any reform efforts should, moreover, be a proper understanding of the nature of the translation endeavour and of the resulting works produced, informed by the insights of linguistic or translation theory. A few words on this should be said first of all.

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84 Alternatively, one would have to argue that the legal situation as it prevailed prior to *Berne* 1971 would have to resume. Apart from general L&Es to copyright holders' rights that did not specifically cater for, but might potentially have benefited, translation in a limited measure, *Berne*, since its adoption in 1886, in its various versions, had provided for the following translation regimes: a translation right limited to ten years (1886); a translation right granted for the whole period of copyright protection that would, however, be limited to ten years for a particular language if no translation into that language had been effected by the author or with his or her authorisation during the ten years (1896); a translation right granted for the whole period of copyright protection to which countries could express a reservation that would make the 1886 or 1896 arrangement applicable (1908); and a translation right granted for the whole period of copyright protection with regard to which previously made reservations could be carried forward or with regard to which new members to the Berne Union could declare their intention to apply the 1896 arrangement (1928, 1948, 1967). The latter also reflects the current position under *Berne* 1971. For a historical account of these arrangements, see the sources referred to in fn 6 above. Hence, even under these arrangements, translation could, at best, be effected ten years after the publication of a work. As has correctly been pointed out, this waiting period is too long, certainly for "scientific and technical books and learning materials". Talagala *Copyright Law and Translation* 135. As for the neglected languages, the conflict with *ius cogens* would essentially remain.

Ricketson and Ginsburg hold that the provisions of *Berne* are inconclusive as to the exact relationship between reproductions and translations under the Convention, that is, whether translating a work amounts to reproducing it.[85] In many ways, however, the current *Berne* arrangements of 1971 do seem premised on the notion that a translation is a form of reproduction of a work, that is, a mere rendering of the work in another linguistic code. The notion supported by many during the early days of *Berne* that the translation activity is, in a way, a mechanistic process that merely alters the linguistic code to produce a faithful copy appears to survive in *Berne* 1971.[86] As pointed out earlier, this may be the reason why *Berne* does not create L&Es specific to the author's translation right in Article 8, *Berne* seemingly considering notably Article 9(2) on permitted reproductions as sufficient to cater for translation needs.[87] Furthermore, while *Berne* 1971, at first sight, seems progressive insofar as it recognises the translator's right in the translation for the first time, the treaty makes it equally clear, however, that protection is "without prejudice" to the (first) author's copyright.[88] Hence, translation, even though it entails a change of expression/form (and reuse significantly relates to ideas/content), remains the essential prerogative of the author of the original.[89] As Venuti[90] correctly points out, the conception of the translation as a replica remains steeped in – and here one may legitimately wonder as to the appropriateness thereof specifically with regard to countries of the global South – the Lockean or Romantic (Western) tradition of individualistic "original authorship" grounded in labour extended or personality rights. This superelevates the "original" and grants comprehensive protection to the "original" author. Derivative works, and also translations, even if nominally also termed "original" works, remain subordinate to the "original". A translation, therefore, "can never be more than a second-order representation: only the foreign text can be original, authentic, true to the author's psychology or intention, whereas the translation is forever

85 Ricketson and Ginsburg *International Copyright and Neighbouring Rights* paras 11.35 ff, 13.83.

86 See Basalamah and Sadek 2014 *The Translator* 403-404 (explaining how this historic view remains a part of *Berne* 1971).

87 See Section 2, fns 7-9 and accompanying text, above.

88 Article 2(3) of the *Berne Convention* states, "Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work."

89 See Basalamah and Sadek 2014 *The Translator* 404 (rendering this critical assessment of the *Berne* provisions). It is an accepted axiom of copyright law that copyright protection only extends to expressions, but not ideas. See, eg, Art 9(2) of *TRIPS*. In the light of this axiom, see also the discussion of the US case of *Stowe v Thomas*, Circuit Court, ED Pennsylvania, Oct 1853, 23 F Cas 201 (1853), at fn 93 and accompanying text below.

90 Venuti 1995 *The Translator* 16.

imitative, potentially contaminating or false".[91] The rights accorded to the creators of subsequent works are more limited in nature. Hence, "original" authors are able to exercise control over royalties and the scope of rights of translators.[92]

Interestingly, there exist historical examples demonstrating that translation can also be seen differently. In 1853, a US court, in the case of *Stowe v Thomas*, held with regard to an unauthorised German translation, published in the USA, of a popular book in English that the translation did not infringe copyright as it merely transcribed *ideas*. In the words of the court, "[a] translation may, in loose phraseology, be called a transcript or copy of … thoughts or conceptions, but in no correct sense can it be called a copy of [a] book".[93] Accordingly, a decolonial, globally inclusive, and linguistically sound understanding needs to view translation differently. It has been held that, while a translation does have a close relation with – that is, derives from – a certain work, it is yet so intimately linked to a specific cultural context that it, for that reason, yields an independent work.[94] Basalamah[95] goes even further, holding that, because translation involves free artistic expression, a translation cannot even be seen as, in any sense, "deriving from" another work – rather, it "complements" that other work. By adopting such an approach, translation "is liberated from its traditional shackles of servitude".[96] What one can certainly say is that translations are

91 Venuti 1995 *The Translator* 4.

92 Venuti 1995 *The Translator* 1-2. Copyright law following the Continental tradition moreover grants the author of the original particularly far-reaching moral rights to preserve the integrity of their work against distortions. In the translation context, this entails enormous power for the author of the original to control the translation process. Venuti 1995 *The Translator* 6-7. British law interestingly provides that the right to object to derogatory treatment of a work does not extend to translations (s 80(2)(a)(i) of the *Copyright, Designs and Patents Act*, 1988 (UK)), presumably because it is difficult to adjudge the quality of a translation. Venuti 1995 *The Translator* 6.

93 *Stowe v Thomas*, Circuit Court, ED Pennsylvania, Oct 1853, 23 F Cas 201 (1853) 208. See also the discussion of the case by Aufderheide and Jaszi *Reclaiming Fair Use* 29-30, the authors describing the court's reasoning as "amazing".

94 Venuti 1995 *The Translator* 5, 15-16.

95 Basalamah *Le droit de traduire* 406. The author here says, "if a translation is a creation, and if all artistic expression is essentially free, then it follows that a translation reflects free expression. What would that imply? That the translation a) is not subordinated to the original work, but *equal* to it *in law*, b) that it is not derived from, but *complementary* to the original work, c) that the original work is not superior, but *different* from each of its translations, d) that 'the original work' is made up of other works, namely translations and translations … other translations and other works, and, therefore, *non-original*" (own translation from original French text).

96 Basalamah and Sadek 2014 *The Translator* 402.

highly transformative in nature.[97] This must, in one way or another, find expression in a reduction of the rights accorded to "original" authors to control translation.

Consequently, how should copyright law provide for translation generally and for translation into endangered languages specifically? One could think of affordable translation licences for commercial and non-commercial translation into any language, automatically granted on (easy) application under a statutory collective licensing scheme where standard rates (which may be higher for commercial translations) are negotiated between a regulatory body and right holders, or determined by independent royalty judges.[98] Such a scheme should, in all instances, provide for exemptions from fees where neglected languages are concerned, potentially remunerating right holders in these cases out of tax money.[99]

As an alternative to such a statutory collective licensing scheme, copyright law could provide that exclusive translation rights regarding a work terminate for a specific language, if (say) five or seven years, three years in the case of educational textbooks, after the first publication of the original work, no translation into that language has been effected by the author or with his or her

97 See Basalamah "Translation Rights and the Philosophy of Translation" 122 (stating that translation is "doubly transformative … [o]n the one hand, the language (the form) of the work changes, and, on the other, the work passes from one set of culturally-influenced potential interpretations or readings to another, thereby adding a supplementary dimension to the original"); Ketzan 2007 *Tul J Tech & Intell Prop* 232 ("Translation is certainly transformative, insofar as it transforms words from one language to another."); Shaver 2014 *Wash U L Rev* 157 ("'[T]ransformative' use … is generally interpreted to require altering the underlying work in a way that adds new meaning and message. … Translation has not yet been recognized as a form of transformative use under U.S. copyright law, but arguably it should be."); Venuti 1995 *The Translator* 18-19 ("[T]he peculiar kind of writing involved in any translation forces a distinction[;] … [the] linguistic and cultural features are sufficiently distinct to permit [original and translation] to be considered autonomous works.").

98 Making a similar suggestion, see Shaver 2014 *Wash U L Rev* 156 (proposing an arrangement similar to the US statutory licensing scheme for musical compositions and recordings).

99 It would be important that any such scheme avoids the errors of the compulsory licensing scheme of the *Berne* Appendix. Licences must be available for educational and cultural, but also all other purposes. It should be permissible to export copies produced under a licence insofar as a neglected language is concerned. The scheme must cover printed and digital works. There should be no waiting or grace periods. It should not be required that copyright holders first be notified. The installation of a system of compulsory licences, in which an adjudicator makes a reasoned decision as to whether or not to grant a licence and decides on the compensation payable, is only a second-best option, compared to one that grants the licence automatically on application.

authorisation.[100] Historically, such an arrangement (a "ten-year regime") existed under earlier versions of *Berne*, and it continues to exist under *Berne* 1971.[101] For many reasons, however, that specific regime has lost its significance today.[102] Insofar as endangered languages are concerned, copyright law should, as part of this alternative, clearly provide that translations, even of whole works, into these languages are always legitimate as of right, without time-limit, even for commercial purposes.[103]

In addition to either of the above schemes, or perhaps even as an alternative to these, copyright law should accord translated texts, or text parts, robust protection as a form of fair use or fair dealing. The reference here is to statutory L&Es that permit (mostly) unremunerated use without authorisation within legally defined bounds. Protection should be particularly robust for translations into neglected languages.[104] (Unremunerated) fair use, as applied in the US, requires fairness to be assessed in the light of "the purpose and character of the use, including whether such use is of a commercial nature", "the nature of the copyrighted work", "the amount and substantiality of the portion used in relation to the copyrighted work as a whole", and "the effect of the use upon the potential market for or value of the copyrighted work".[105] A "hidden fifth factor" relates to "the extent to which the claimed fair use serves the public

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100 Making a similar suggestion, see Ncube "Calibrating Copyright for Creators and Consumers" 274-275 (proposing "[r]educing the duration of the translation right"). Also Venuti 1995 *The Translator* 19-20 approves of this idea and recommends a term of five years. If, within the term, a translation into a specific language has been effected by the author or with his or her authorisation, the duration of the translation right with regard to that language would remain that of the full duration of copyright.

101 Article 30(2) of the *Berne Convention*. On the history of the provision, see the sources referred to in fn 6 above.

102 See Silva 2013 *J Copyright Soc'y USA* 585-586 (mentioning the reasons why the "ten-year regime" in force "is not satisfactory"). The regime's availability is or was tied to the specific commitments states had undertaken under previous versions of *Berne*, forfeited if not opted for at the time of ratification of, or accession to, *Berne* 1971, or excluded if a developing state preferred, or wished to keep open, the option of relying on the translation provisions of the *Berne* Appendix, as relevant. Arts 30(2) of, and V(1)(a) of the Appendix to, the *Berne Convention*. It seems that very few countries currently benefit from the regime. Ten years is also too long a waiting period. See fn 84 above.

103 Similar solutions might be made to apply to non-endangered, but other local or "developing" languages. See, generally, Ncube "Calibrating Copyright for Creators and Consumers" 275-276 (proposing "[l]ocal language limitations" for "specific, local, neglected languages").

104 See Basalamah 2000 *IDEA: J L & Tech* 535 (arguing that translations into the languages of least developed countries should be covered by fair use); Shaver 2014 *Wash U L Rev* 157 ("[F]air use doctrine might be developed to accord greater freedom for translations into neglected languages.").

105 § 107 (Limitations on exclusive rights: Fair use) of *17 US Code* (Copyright Law of the United States and Related Laws) (US).

interest".[106] Translations do not limit the market in the original language.[107] In fact, they could benefit that market, as the fact that a work has been translated may indicate its value to readers in the original language.[108] Furthermore, the market in a local, "developing", or neglected language will be weak.[109] The fact that use occurs for a commercial purpose, or that a *whole* work is used (the usefulness of translation often lies in the rendering of entire texts), would tend to count against fairness.[110] However, more decisive in the enquiry is whether use is transformative and in the public interest.[111] Translations for educational or cultural literacy purposes, even if to some extent commercially motivated, are clearly in the public interest. The degree to which the target language is local, "developing", or neglected, certainly has a bearing on the strength of the public interest. Moreover, as Venuti[112] explains:

> A translation does not copy in the sense of repeating that text verbatim; rather, the translation enters into a mimetic relation that inevitably deviates from the foreign language by relying on target-language approximations. Even though a contemporary translation is required to imitate the entire foreign text, their linguistic and cultural features are sufficiently distinct to permit them to be considered autonomous works.

This serves to confirm the point made earlier, namely that translations are highly transformative in nature. Accordingly, the translation of whole works for educational or cultural literacy purposes, specifically if into a neglected language, even if for commercial purposes, could often be held covered by fair use. Whereas fair *use* means a broad open clause exemption to copyright protection, covering uses that may be considered fair, fair *dealing* enumerates more narrowly, notably in respect of the purposes, what may be considered fair

106 Reichman and Okediji 2012 *Minn L Rev* 1386.

107 Venuti 1995 *The Translator* 18.

108 Venuti 1995 *The Translator* 18.

109 See Basalamah 2000 *IDEA: J L & Tech* 535 (arguing that many developing countries have "so many languages … that they will not constitute a significant market").

110 Venuti 1995 *The Translator* 19 considers that the commercial purpose would often likely mean that even translations for educational or cultural literacy purposes would not pass muster under fair use, but that translators understandably also pursued a commercial purpose with their translations. He finds this to be an unsatisfactory outcome as the authors of the original works are always free to pursue a commercial purpose. Ketzan 2007 *Tul J Tech & Intell Prop* 232-233 argues that, because translations are usually made of works in their entirety, a reliance on fair use might often not be successful in these cases.

111 See *Campbell v Acuff-Rose Music Inc* 510 US 569 (1994) 579 ("The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use."); Reichman and Okediji 2012 *Minn L Rev* 1386 ("[T]he federal appellate courts look for transformative uses that advance the public interest").

112 Venuti 1995 *The Translator* 19.

forms of use. In principle, however, "the two terms are synonymous".[113] Fairness is assessed by the same criteria. In drafting fair dealing provisions, care will have to be taken to ensure that the formulations used will legitimise a wide scope of permission and fee-free translation for educational or cultural literacy purposes, especially in respect of translations into neglected languages, and even if for commercial purposes.

Three further points need to be made. Firstly, the above suggestions for copyright reform may, at first sight, appear to treat commercial translations into endangered languages too benevolently. However, it should be remembered that also commercial translations can serve the public interest in education and cultural literacy.[114] Furthermore, the markets for these languages are weak (few and/or impecunious speakers) and, without a reduction of expenses, commercial publishers will hardly be interested in producing translations for these markets if they are to keep prices low and yet be able to make a profit.

Secondly, translations into neglected languages will only be useful if they can be accessed and used or reused for free or affordably and without undue restrictions flowing from copyright law, licensing, or technical protection measures (digital locks and fences). Ncube says with regard to translations into local languages effected under schemes such as those discussed above that provision ought to be made for copyright eligibility exclusions to enable the creation of a commons.[115] This makes sense for non-commercial translations. As for commercial translations, copyright protection will at least have to be restricted, *inter alia* in its duration. Additionally, to facilitate free or affordable access, states should subsidise both commercial and non-commercial translation endeavours.

Thirdly, limitations and exceptions to the exclusive rights of right holders must comply with the three-step test of international copyright law. Hence, limitations and exceptions would, firstly, have to be confined to certain "special" cases, secondly, not conflict with the normal exploitation of a work, and, thirdly, not unreasonably prejudice the legitimate interests of right holders.[116] However, it needs to be underlined, as explained earlier, that, according to the integration rule of treaty interpretation, international copyright law, thus also the three-step

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113 Dean *Handbook of South African Copyright Law* 1–95,-1–96, para 9.2.3.

114 By way of analogy, Reichman and Okediji 2012 *Minn L Rev* 1440-1441 argue that a broad research exemption in copyright law should not distinguish between commercial and non-commercial research because "basic scientific research results are … a public … good".

115 Ncube "Calibrating Copyright for Creators and Consumers" 275-276.

116 See fns 8 and 11 above.

test, must be read in the light of international human rights law.[117] Somewhat idealistically perhaps, it has been stated that "the three-step test must *perfectly mirror* the demands of human rights[,] … [it] must permit any such use as constitutes an entitlement under human rights".[118] Certainly, however – as the world's leading copyright scholars have held in a meanwhile famous declaration on the three-step test, prepared under the auspices of the Max Planck Institute for Innovation and Competition – in assessing the permissibility of limitations and exceptions under the test, the legitimate interests of third parties "deriving from human rights and fundamental freedoms" and "other public interests, notably in … cultural, social, or economic development", must be taken into account.[119] The three-step test must therefore be read in the light of all the linguistic human rights in education and for cultural literacy that have been enumerated earlier.[120]

What then would be the implications of the three-step test for the various schemes of translation rights and limitations and exceptions presented above? Insofar as they address translation into languages that are *not* endangered, it is submitted that, without adjudging this in any detail here, but when duly taking into account relevant human rights norms, the above schemes could potentially be considered compliant with the three-step test. Insofar as they address translation into languages that *are* endangered (and for these languages far more drastic reforms have been urged above), it is important to appreciate that the suggested regulations cannot be considered to be subject to the three-step test. As international copyright law, to the extent that it purports to regulate translation into endangered languages, conflicts with *ius cogens* – thus the argument made in this article – the relevant provisions will, to that extent, be void. This means that also the three-step test loses its applicability.

6 Language and decoloniality of knowledge and education in Africa

It is often said that in many developing countries there is "no reading culture" and that, for that reason, it does not make much sense to produce books for these markets. This argument is particularly also made for Africa, alleging that,

117 See Section 4, fn 53 and accompanying text, above.

118 Beiter 2019-2020 *Buff Hum Rts L Rev* 54-55.

119 Geiger, Griffiths and Hilty 2008 *IIC* 712 (para 6 of the Declaration on a Balanced Interpretation of the "Three-Step Test" in Copyright Law). Repeating these considerations verbatim, see Hilty *et al* 2021 *IIC* 66 (Point B.II.2. of the proposed International Instrument on Permitted Uses in Copyright Law).

120 See Section 3 above.

in African countries, the oral tradition is prevalent.[121] However, as a publisher is reported to have stated, "People often say black people don't read. A lot of rubbish! Of course they read, but for some reason they don't buy books."[122] Shaver[123] presents evidence for the South African context, bearing out that all classes and ethnicities, in principle, value and enjoy reading. There are reasons why black people do not buy books. As Edwards and Ngwaru[124] point out, the indications are that Africans would read if the content was affordable, accessible, and of interest. Hence, high prices of books and widespread poverty are a problem.[125] The other problem is that books are not available in local languages.[126]

The translation of works holds an enormous potential to address the dearth of reading materials in African languages.[127] Overcoming the copyright-related impediments outlined in this article is crucial, but constitutes only one step in the endeavour of realising this potential. Other obstacles exist in the challenges of achieving good quality translations. Poor translations can have a "disastrous impact".[128] Quality translations depend on the knowledge and skill of the translator.[129] Translators need not only be proficient linguists but must also have specialist skills related to the specific audience for whom they translate (eg, children's books, language or science teaching, etc).[130] It is, moreover, crucial to understand that translation can only be one of two complementary strategies that need to be followed in making works in local languages available. The other indispensable strategy is to promote original writing in local languages. Such original writing would, of course, most genuinely reflect the cultural context within which any local language thrives.[131] One should also not forget that translating Western works into the languages of developing

121 See Edwards and Ngwaru 2011 *J Multiling & Multicult Dev* 442 and Shaver 2014 *Wash U L Rev* 130-131 (all referring to the fact that this argument is often (falsely) made).

122 See Edwards and Ngwaru 2011 *J Multiling & Multicult Dev* 442 (quoting this publisher).

123 Shaver 2014 *Wash U L Rev* 131.

124 Edwards and Ngwaru 2011 *J Multiling & Multicult Dev* 443.

125 Edwards and Ngwaru 2011 *J Multiling & Multicult Dev* 444-445; Shaver 2014 *Wash U L Rev* 132-135.

126 See Shaver 2014 *Wash U L Rev* 132 ("[T]here is a problematic mismatch between the language they speak and the language in which books are being published.").

127 See, generally, Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* (confirming this potential).

128 Talagala *Copyright Law and Translation* 14.

129 Talagala *Copyright Law and Translation* 14.

130 Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 594-596.

131 See Bannerman *International Copyright and Access to Knowledge* 114 ("[T]ranslation … cannot, alone, be equated with 'access', it can facilitate some forms of access"); Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 599 (underlining "the need to develop original writing in African languages at all levels").

countries holds a danger of remotely perpetuating dominance and colonialism, as such translations may also involve the advocacy of Western ways of thought and ways of life.[132] Legitimate questions may arise about the "cultural appropriateness" of some of the books being translated into African languages.[133] It is also sometimes held that translation may, in fact, be detrimental to original writing in local languages.[134] Having a look at various facts and figures, however, Edwards and Ngwaru[135] conclude that translation would seem not to constitute such a threat. Consequently, when considering the role of states in this context, it is clear that substantial obligations arise for governments. Beyond newly devising copyright law, states will have to actively promote conditions conducive to, and become directly engaged with, publishing in, and translating into, African languages. This calls for policies of additive multilingualism at all levels of education,[136] the promotion of a reading culture in local languages, provision of subsidies to translators and publishers, training of translators, active support for original language writing, and so on.

The assertion that Africans do not have a reading culture and that, for that reason, African book markets can largely be ignored reveals a latent racism.[137] Translation should also be seen as a way of sharing (rather than withholding) knowledge (and sharing it properly), democratising access thereto, and correcting injustices and inequality that have their roots in imperialism, colonialism, and Apartheid.[138] Translation, moreover, assumes a profound significance in the context of achieving a decolonisation of the educational curriculum in African and other formerly colonised countries. Although colonialism officially ended many years ago, it persists in many ways, *inter alia* in the education systems of former colonies. Teaching still follows a Western-based curriculum and continues to take place in the languages of the former colonial masters. Hence, the hegemony of the Western education model endures.[139] This education model is not, as is often falsely assumed, a "universal" model, representing the ultimate goal towards which any society

132 Bannerman *International Copyright and Access to Knowledge* 99.

133 Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 592.

134 See Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 592 (drawing attention to this concern raised by some).

135 Edwards and Ngwaru 2011 *Int J Biling Educ & Biling* 593.

136 See the definition of "additive multilingualism" provided in Section 3, fns 36-37 and accompanying text, above.

137 See Shaver 2014 *Wash U L Rev* 131 (remarking that there is "a thinly veiled racism lurking behind the invocation of 'culture'").

138 See Basalamah and Sadek 2014 *The Translator* 407 (referring to the sensitivity of translation's sharing mandate to "the inequalities generated by current measures of legal protection" that benefit multinational corporations).

139 Manthalu and Waghid "Decoloniality as a Viable Response" 26.

should strive. It is the particularist model of a very specific type of society with very specific values.[140] That model is also not applied because of its veracity (and the falseness of others), but because it was forcefully superimposed on the educational structures that were in place in the colonies at the time.[141] Its continued application is premised on the continuation of a colonial mindset that views Western epistemologies as superior to others.[142]

What then would a decolonisation of education entail? The goal must be the installation of an open-ended curriculum that provides room for a mix of epistemologies, in which the local epistemology enjoys prominence of place.[143] While a decolonisation of education would require many things, such as a reliance on the writings of local authors, the study of indigenous knowledge, a rewriting of history incorporating the perspective of the oppressed, its most important component, it is submitted, would be education that takes place in local languages.[144] The importance of multilingualism, based on mother tongue education, for any person's success in education and life, has been demonstrated above.[145] Local languages facilitate the vernacularisation of knowledge, transposing knowledge to, and creating meaning within, the local context. This would emphasise local challenges, the local economy, and local values – and thus induce local knowledge appropriation.[146] Taking the case of values as an example, philosophy, politics, and economics need to be understood in the light of one's "own" values. Hence, in Africa, the notion of *ubuntu* is common to most cultures. This emphasises the interconnectedness of every person with all others.[147] While the Western tradition is grounded in

140 Manthalu and Waghid "Decoloniality as a Viable Response" 34.

141 Manthalu and Waghid "Decoloniality as a Viable Response" 28.

142 See Manthalu and Waghid "Decoloniality as a Viable Response" 38 ("Africa is largely on the passive receiving end of modern education. Few developed nations orchestrate the constitution of education globally.").

143 Roughly in this sense, Manthalu and Waghid "Decoloniality as a Viable Response" 35.

144 See Manthalu and Waghid "Decoloniality as a Viable Response" 42 ("Language is … among the central pillars for achieving epistemic liberation and justice.").

145 See Sections 3 and 4 above.

146 Manthalu and Waghid "Decoloniality as a Viable Response" 30 argue that the absence of African languages in education, including in higher education, "undermines the possibility of meaningful African appropriation of knowledge". Knowledge appropriation is achievable "when problems, concepts and frameworks of thought are vernacularised". Vernacularisation refers to "linguistic processes through which universalist claims are … contested and contextualised".

147 See, eg, the definition of the concept of *ubuntu* provided by Murithi 2007 *Globalisation Soc'ies & Educ* 281-282. Persons with *ubuntu* "are generous, hospitable, friendly, caring and compassionate. They share what they have." *Ubuntu* means that one person's humanity "is inextricably bound up" with that of others. A human being is a human being only through other human beings. Belonging to a greater whole, where a person diminishes others, they simultaneously diminish themselves.

the idea of individual autonomy, autonomy in Africa is always restrained by the responsibility towards others.[148] Such a fundamental difference in perspective must have an influence on the construction of knowledge. Values such as this can only really be transported through the local language. Only once this happens, can the curriculum be said to have been decolonised.[149] The role that translation can, and must, play in this scenario is evident. The nature of translation, ideally, is to create transformed, vernacularised versions of original texts for many different cultural contexts to facilitate local knowledge appropriation.

7 Online machine translation and the future

As we are entering the fourth industrial revolution, the translation of works will only gain traction in the future. Machine translation has been around for some time. This makes translating texts easier than ever before. As yet, it is uncertain whether machines will ever produce texts that satisfy the criteria of not only being good, but of also achieving the vernacularisation just referred to – but maybe they will. Already in 2007, Ketzan[150] had recognised the potential of machine translation, stating that it "is socially, politically, and commercially beneficial". Online machine translation, he maintains, "has the power to revolutionize communication by eliminating language barriers, bridging the gap between different cultures, *providing services to minority language speakers*, and transforming global e-commerce".[151] Machine translation, however, evidently creates a threat of copyright infringements on a massive scale as anybody using the internet or related software could effect translations with ease and without authorisation.[152] Can and should such translations be covered by fair use?[153] Should one, in a new world of infringing, but ubiquitous copying online, deduce implied licences that allow the making of machine

148 Manthalu and Waghid "Decoloniality as a Viable Response" 33.

149 In this, but a broader sense, see Moyo 2003 *S Afr Linguistics & Appl Lang Stud* 129 ("Ex-colonial languages have become languages of power despite the fact that they are not in any of these countries spoken by the majority of the countries' populations."); Mungwini 2017 *Int J Afr Renaiss Stud* 13 ("[T]he most fundamental, subtle, pervasive, and intractable instrument of mental colonisation is language. If the effects of mental colonisation are to be arrested a reaffirmation of indigenous languages is a necessity."); Nkuna 2013 *Int J Afr Renaiss Stud* 71 ("Communication in colonial languages cannot fulfil black Africans' wishes regarding … political, economic, social, technological, environmental and cultural [development].").

150 Ketzan 2007 *Tul J Tech & Intell Prop* 205.

151 Ketzan 2007 *Tul J Tech & Intell Prop* 205.

152 Ketzan 2007 *Tul J Tech & Intell Prop* 206.

153 See Ketzan 2007 *Tul J Tech & Intell Prop* 232-233 (discussing whether fair use could successfully be raised as a defence in this context).

translations where right holders have not expressly reserved their copyright?[154] Would any liability accrue to those creating software that can produce such translations?[155] Should machine translation into a neglected language not always be permissible? What is clear, though, is that, in this type of environment, translation rights and limitations and exceptions require new or further regulation.[156] One may, however, also ask whether, should machine translations ever become good enough, this would then not be the right time, subject to the "original" author retaining moral paternity rights, to severe the tie between original and translation more clearly once and for all for copyright purposes and "return" to *Stowe v Thomas*.[157] Translation would then become everyone's right.

However, already now, translation rights and limitations and exceptions require attention. Urgent attention is required to address facilitating translation into the neglected languages. This is necessary to ensure linguistic human rights in education and for cultural literacy, to protect linguistic and cultural diversity, and to secure the survival of vulnerable cultural groups. Many neglected languages face extinction, one such language "vanishing" every 14 days.[158] Even the languages of larger, but poorer language groups may face long-term insignificance if no educational and other reading materials are made available in the languages concerned. Translation may significantly contribute to ensuring the availability of reading materials. The deplorable state of many of the world's languages and the vulnerability of their speakers are not coincidental. They follow from evil, paternalistic, or recklessly inadequate state policies on language matters. They also have a basis in current copyright law. A Welsh saying holds that *"cenedl heb iaith, cenedl heb galon"* – a nation without a language is a nation without a heart. Where a cultural group is forcibly dispossessed of its language it is not just a cultural treasure that is lost. The group itself dies. It becomes a victim of linguistic genocide.

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157 On the *Stowe v Thomas* case, see Section 5, fn 93 and accompanying text, above.

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List of Abbreviations

Buff Hum Rts L Rev	Buffalo Human Rights Law Review
BVerfG	Bundesverfassungsgericht
CESCR	Committee on Economic, Social and Cultural Rights
Colum J Transnat'l L	Columbia Journal of Transnational Law
ComRC	Committee on the Rights of the Child
ED Pennsylvania	Eastern District of Pennsylvania
Environ Sci Proc	Environmental Sciences Proceedings
Globalisation Soc'ies & Educ	Globalisation, Societies and Education
GRUR Int	Gewerblicher Rechtsschutz und Urheber-recht International – Journal of European and International IP Law
IDEA: J L & Tech	IDEA – The Journal of Law and Technology
IIC	International Review of Intellectual Property and Competition Law
ILC	International Law Commission
Int J Afr Renaiss Stud	International Journal of African Renaissance Studies – Multi-, Inter and Transdisciplinarity
Int J Biling Educ & Biling	International Journal of Bilingual Education and Bilingualism
Int J Hum Rts	The International Journal of Human Rights
Int J Minor & Group Rts	International Journal on Minority and Group Rights
J Copyright Soc'y USA	Journal of the Copyright Society of the U.S.A.
J Multiling & Multicult Dev	Journal of Multilingual and Multicultural Development
L&E(s)	limitations and exception(s) (to copyright protection)
Lang & Educ	Language and Education
Leiden J Int L	Leiden Journal of International Law
Minn L Rev	Minnesota Law Review

NYU J Int L & Pol	New York University Journal of International Law and Politics
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
S Afr Linguistics & Appl Lang Stud	Southern African Linguistics and Applied Language Studies
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
Tul J Tech & Intell Prop	Tulane Journal of Technology and Intellectual Property
UC Davis L Rev	UC Davis Law Review
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US/USA	United States of America
Wash U L Rev	Washington University Law Review
WIPO	World Intellectual Property Organization
ZStW	Zeitschrift für die gesamte Strafrechts-wissenschaft