Copyright in the context of scholarly communication: experience report on the LIS curriculum in Brazil

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Abstract

In this essay, we present an Experience Report on a course focused on copyright in the context of scholarly communication that we offered in a Brazilian LIS postgraduate program. As a justification for this course, we mention the recent changes in the debates on copyright in the open access movement, which require a deeper understanding of its legal foundations. Finally, we present 14 key themes that can be used by LIS course instructors anywhere in the world to offer a similar course. The topics mentioned for teaching the subject can be considered based on the following general subjects: theoretical and historical bases on copyright, theoretical and historical bases on scholarly communication, copyright in the context of information professionals and various topics related to copyright in science. The aim of this work is twofold: to foster discussion on how to incorporate copyright education into the scholarly communication in LIS curriculum and to contribute to the preparation of specialized professionals for what we anticipate being the next phase in open access debates: the copyright reform. We believe that the course provides a broad and coherent framework for teaching this subject. In our experience, students progressed rapidly from a very low level of competence in copyright debates to a higher level of understanding.

Keywords: copyright, scholarly communication, LIS curriculum, open access, legal reform

Introduction

There is a major challenge when it comes to the place of scholarly communication in the LIS curriculum, which is to think about the place of copyright in this conversation. We all know that copyright directly interferes with the scientific editorial process and access to knowledge. And, ultimately, in its entire communication process; however, the debates on the foundations of intellectual property fall short of such scope and the truth is that we still study and teach this subject very little. In this text, we argue that copyright should be considered an integral part of the conversation about scholarly communication in the LIS

curriculum and should be taught in greater depth. Finally, we will present an Experience Report on how we did this in Brazil.

The justification for this statement is a structural change that we have observed in recent debates regarding Open Access (OA) to scientific publications. This change requires a complex in-depth understanding of copyright that was, to a certain extent, dispensable. First, we will address this change and then present our Experience Report, including a proposal of 14 essential topics to be discussed in the classroom and the essential bibliography to discuss them.

The structural shift in the debates on open access strategies is occurring as follows: since the BBB declarations (Budapest, Bethesda and Berlin), the only OA strategy has been the use of public licenses, especially Creative Commons licenses. This can be easily seen in books by notable OA advocates such as Willinsky (2006) and Suber (2012). For example, note how Suber argues that there is no need for legal reform for OA to advance: “OA is already lawful and doesn’t require copyright reform” (Suber, 2012, p. 44). This position is reiterated in several other parts of his influential book.

One result of this is that the use of public licenses eliminates the need for in-depth debate on the fundamentals of copyright law. Public licenses are much simpler to understand than copyright itself, and this is precisely one of their advantages. However, this advantage also brings with it a dysfunction: as a community of OA advocates, we lose the opportunity to hold an in-depth debate on the fundamentals of copyright, because we do not even know what these fundamentals are. John Willinsky’s 2006 book, for example, has a chapter dedicated to copyright, but it is limited to presenting Creative Commons licenses. It is as if, for the OA movement, the topic of copyright was limited to what licenses are. However, the truth is that licenses are just a footnote in the complex world of copyright.

There are numerous analyses of the success and failure of the OA movement, many of which conclude that, despite enormous efforts, the number of open access journals remains smaller than one would like (Green, 2017) and commercial journals are beginning to embrace OA as a new business model. This view that the license-based strategy has failed is one of the justifications for structural change in the most recent debates.
Thus, in recent years, the debate has moved towards the need to discuss copyright reform, given the perspective that the strategy based on licenses, although celebrated, is not achieving the expected result. In Brazil, the work of Couto (2022) defended the need to discuss the reform of the copyright law based on an in-depth debate on the foundations of the protection of scientific works and the developments arising from the Sci-Hub case.

From an international perspective, some prominent authors are also defending this view, seeking ways to reform the law as a strategy of the OA movement. For example, Peter Baldwin, in the book *Athena Unbound: Why and How Scholarly Knowledge Should Be Free for All* (2023), began to advocate that copyright law be reformed for scientific works, based on the idea that such works should be considered "works for hire" and that their ownership should belong to the scientific institutions that contracted the authors. In this way, the institutions could negotiate more strongly the publication of articles, ensuring that all would be published in open access.

However, perhaps the most symbolic change of position is that of John Willinsky, who in the book *Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science* (2023) also advocates law reform as a new strategy to promote OA. This is a major shift in position from his earlier book, from 2006. This work is very symbolic because Willinsky is a notable advocate of OA, responsible for creating central infrastructures for the advancement of the movement. And yet, he now understands that the efforts have yielded unsatisfactory results. In this book, the author advocates that copyright be reformed to consider scientific works as a type of work separate and distinct from other works (something that does not happen today, since copyright considers scientific works as a type of literary work) and that a specific legal regime be created for them. In this new legal regime, all scientific works would be published with a compulsory license that would guarantee open access. According to the author, this is a "realistic proposal", because it allows the science publishing market to continue to exist, but ensures that, regardless of the wishes of the parties involved, the works are made free after a brief embargo.

In Europe, legislative debate on copyright reform is also being strongly encouraged, as exemplified by the Knowledge Rights 21 (KR21), which brings together copyright experts to discuss changes to copyright laws with the aim of promoting open access. A notable example is the debate on Secondary Publishing Rights (SPR), which would allow authors to retain copyright and allow scientific articles to be republished (or made available again) in institutional repositories without the need for embargo (zero embargo). In other words, it is a legal device that allows Green Open Access independently of the authorization of commercial publishers. According to a recent report (Tsakonas et al., 2023), SPR is already applied in seven European countries, but now needs to be harmonized from the point of view of European Union community law.

What all these proposals have in common is that they are based on deep and complex discussions about the foundations of copyright law. It is through legal discussions that we will find a path for the future of open access, because only then will it be possible to think about proposals for legal reform. For this reason, teaching copyright in the context of

scholarly communication has become indispensable.

Although it is obvious that Open Access (especially Diamond Open Access) is a success story in the Global South, it is necessary to consider that scholarly communication occurs within a global system, and that any local success is counterbalanced by the global dominance of commercial journals. Therefore, even for us in the Global South, who live daily with a successful open access model, copyright reform is essential. According to the *principle of national treatment*, of the Berne Convention, local copyright laws are applied locally even in cases where the copyright holder is a foreigner. Thus, a reform of copyright law carried out in the Global South would guarantee access to works produced in the Global North, advancing open access where it is not yet a complete success.

The primary objective of this essay is to provide a discussion on how to implement copyright education in the context of scholarly communication in LIS curricula. The secondary objective is to contribute to the preparation of specialized personnel for what we believe to be the next phase of the debates on open access, which is copyright reform. We do this through an experience report that narrates how we teach this topic in Brazil. In addition, we provide recommendations for implementing a similar curriculum in other parts of the world. According to Mussi et al. (2021), experience reporting is a path to learning that is based on the critical presentation of scientific and professional practices.

Experience report

We began teaching copyright in the context of scholarly communication in a postgraduate program in Brazil in 2023, with a second edition held in 2024. The first author of this article has worked on copyright for many years, including experience in managing scholarly communication at a large Brazilian university. The second author is a copyright specialist working in the field of LIS in Brazil. Both authors are members of the Brazilian Commission on Copyright and Open Access of the Brazilian Federation of Associations of Librarians, Information Scientists and Institutions (FEBAB).

This course is a rare example in the Brazilian LIS curriculum, which rarely comprehensively discusses these two topics. In general, copyright is not taught in depth, even in Law courses. In the case of LIS courses, the topic of copyright is most commonly offered as a specific, quick, and fleeting topic, in more all-inclusive scholarly communication classes, but without delving into its fundamentals. However, the number of researchers dedicated to studying copyright in the context of LIS is growing in the country, which may change this scenario of scarcity in the coming years. Therefore, we believe that our experience can be useful to other professors who want to offer similar courses at their universities.

The objective of this course is to enable students to answer the following question: *what is the role of copyright in regulating scholarly communication?* We believe that by knowing how to answer this question, students will become better-qualified professionals to work in the field of scholarly communication. This may include the future participation of these students in likely upcoming debates on legal reform.

14 Key themes about copyright and scholarly communication

Here are 14 key themes to be addressed in a curriculum that aims to discuss copyright in the context of scholarly communication. Each of the topics can be addressed in an individual class lasting approximately three hours. The order of the first 6 topics must be followed exactly because they follow a logical progression that will help students understand throughout the course. The order of the remaining 8 topics can be changed without affecting students' understanding. The course is designed to be delivered in 15 lessons, lasting 15 weeks (one lesson per week), with the last lesson being reserved for an oral presentation by the students. The assessment is carried out through this oral presentation, the submission of an essay of up to 10 pages and the participation of students throughout the classes. We suggest that students read the base text before classes, to facilitate discussions.

Thus, in each class, a basic text may be suggested to students, but the instructor must understand all the suggested bibliographies for each topic so that he or she can synthesize them into comprehensive and coherent lessons. This can be a challenge, as this bibliography is rarely presented as a cohesive set and a high degree of interdisciplinarity may be necessary for its full understanding. However, we believe that this is the best way to approach this topic: respecting its essential complexity and interdisciplinary nature.

The topics were chosen based on four sets of subjects: 1) theoretical and historical bases on copyright; 2) theoretical and historical bases on scholarly communication; 3) copyright in the context of information professionals; and 4) topics related to copyright in science. Thus, we were able to move from a general training related to copyright and scientific communication to more specific topics related to the work of information professionals (especially librarians and scientific editors) and intellectual property in science. The last two sets of topics (i.e. copyright in the context of information professionals and topics related to copyright in science) can bring up secondary subjects, which are necessary for professional practice and which are required at the time the class takes place. This way, if at the time the subject is offered there is an important local debate, the professor can include it here.

Theme 1: Information as an object of rights

The course should begin with a general introduction to Information Law, discussing the concepts of information for LIS in comparison with legal concepts (e.g. Bygrave, 2014). Over the years, a multitude of laws have emerged intending to regulate information and it may be interesting to briefly discuss this history, such as access to information laws, personal data protection laws, etc. For this, we use the book by Rowland and Kohl (2017) as a basis, but there are probably many works available for a national reading on the subject. In addition, a little information regulatory theory may be interesting and, therefore, we strongly suggest discussing Lawrence Lessig's (2006) classic text on this topic, *Code 2.0,* with special attention to his "Pathetic dot theory". Students will easily notice that the foundations of information regulatory theory presented by Lessig are currently being debated in the context of the regulation of social media companies. Copyright should therefore be presented as one of the topics of information regulation – perhaps the oldest of them – that is present in almost all debates of this kind. For example, in recent discussions on the regulation of social media, the issue of remuneration for journalistic companies has been brought up in several parts of the world. Some general topics on Law can also be presented in this class, such as the difference between legal regimes, the hierarchy of laws, and the sources of law (doctrine, laws, treaties, case law, etc.).

Theme 2: History, theories, and functions of scholarly communication

In a single class, we aim to present a historical and theoretical overview of scholarly communication so that students can have their first contact with the topic. "Scholarly communication" should be presented as a subject in the LIS curriculum, and for this, we recommend a general overview of classic texts. The history of how this subject is discussed can vary from country to country, including the name it receives: scholarly communication, scientific communication, scholarly publishing, etc. It is important to connect global history to local traditions. Next, we discuss the history of scientific journals. For this topic, the recent book by Aileen Fyfe et al. (2022) is an essential work – we focus the discussion on the introduction and chapter 1, but we recommend that students read the entire work if possible. Scholarly communication should also be discussed in the context of the history of epistemology, with special attention to Francis Bacon's book, *New Atlantis*, and the use that the Royal Society made of the concepts presupposed in the notion of "Solomon's House" that is presented in the work. From this point on, the history and theory of scholarly communication begin to interact more clearly. Therefore, we suggest that the discussion of the text by Shapin and Schaffer (1985) be included, with special attention to the topic "Prolixity and Iconography" in Chapter II, which discusses the key concept of "virtual testimony". Then, the theory of scholarly communication will take up the rest of the class, which will be addressed in four points: a) communication theories that bring inherent epistemological aspects (e.g. Luhmann, 2000); b) epistemological theories

that bring inherent communicational aspects (e.g. Fleck, 1981); c) models of scholarly communication (e.g. Garvey & Griffith, 1972); and d) functions of scholarly communication (e.g. Roosendaal & Geurts, 1997).

Theme 3: The market and the economy of scholarly communication

This class is a direct continuation of the previous class because it will also discuss the history of scholarly communication but will focus on its economic and market aspects. From what moment and through what forces did scholarly communication become a highly profitable market? Who are the main players in this market and how does it function today? To answer these questions, we begin with a historical introduction to a key moment in the construction of this market, which is the publication of Vannevar Bush's report, *Science: The Endless Frontier* (1945), shortly after the end of World War II. This report had a significant impact on the scholarly communication industry since one of its recommendations (indicated in Chapter 5) was the publication of research that had previously been embargoed. The large number of resulting publications moved the scientific publishing market, which began to grow unstoppably. To contextualize the impact of this report, we suggest discussing the text by Greco (2019), which tells this story accurately. The case of Elsevier can be used as an example to demonstrate the turnaround that occurred in the market after the end of the war – for this, the historical text that the publisher wrote about itself can be addressed (Elsevier, 2005). The rest of the class will focus on analyses of the current market, and we do so based on the texts by Eger and Scheufen (2018) and Larivière et al. (2015). It is important to report on these topics: a) the market dominance exercised by the "big five"; b) the profit rates of these corporations; c) the evolution of the prices of scientific journals in comparison with the evolution of other price indexes; d) the serials crisis, etc. Another relevant subject that should be considered is the most recent debate about the available business models, with an emphasis on the contrast between the subscription model and the model based on APCs – there is a large body of literature on this, and we suggest choosing the most recent possible since the debates in this field are evolving rapidly. Finally, to highlight the dominance of the current oligopoly in this market, we talk about the aggressive approach of corporations to maintain their dominance, whether through mergers or acquisitions (we use the case of the purchase of Mendeley by Elsevier as an example).

Theme 4: Copyright: an introduction

Finally, the course will directly address the fundamentals of copyright in an introductory lecture. We strongly recommend that this introduction be made concerning local copyright law – therefore, it is important to choose an introductory text by a national author. However, we also recommend that the general, and even universal, aspects of copyright be emphasized (such as its structure) so that students can read foreign texts and adapt these doctrines to the law of their country. We use Brazilian and international jurists

simultaneously. In other words, the lecture should clarify that there are general aspects of copyright theory that are applicable worldwide, but that any international text on the subject should always be compared to local law to know what applies and what does not directly apply. This may take some time and, depending on the professor's training, it may be quite a challenge, since it requires legal repertoire regarding comparative copyright law (knowing the differences between local law and the laws of other countries). In any case, we suggest the following general structure for the class, which we believe is applicable in any jurisdiction: a) intellectual property: differences between copyright and patent law; b) legal regime: differences between copyright (common law) and droit d'auteur (Roman-Germanic law); c) history of copyright (from royal privilege to copyright laws, including a history of all national laws that your country has had); d) internationalization: a general discussion on the role of the Berne Convention and the TRIPs Agreement; e) general structure of copyright, which should include notions such as the *subject of the right* (author and owner), the *object of the righ*t (protected works and works excluded from protection), the *content of the right* (the list of property rights and moral rights to be exercised by the subject) and, finally, the *transfer of the right* (including publishing, assignment and licensing contracts). Any textbook on copyright will provide relevant explanations on all four of these elements (*subject, object, content, and transfer*). In any case, it is up to the instructor to select this text, based on the authors and the law of his/her country.

Theme 5: History of scientific works protected by copyright

Once the foundations for understanding copyright have been established, we can begin a more focused study to understand how this right applies to scientific works. We begin by answering the following questions: Why are scientific articles protected by Copyright Law and not by Patent Law? How does industrial property law exclude scientific knowledge from this list of protection? How did copyright law include "scientific works" in its list of protection? The literature on this topic is scarce, but the professor will find useful references in the works of Merges (1996) and Miller (2008), which serve as a basic text for the class. There is also a recent French book written by Gabriel Galvez-Behar, *Posséder la science: la propriété scientifique au temps du capitalisme industrie*l (2020), which we enthusiastically recommend. To begin, it is necessary to review some basic principles that differentiate patent law from copyright – by doing so, students will understand that scientific knowledge (discoveries, theories, etc.) cannot be patented. The exclusion of patentability of scientific principles is what led certain authors of scientific works to seek legal protection in copyright, despite these rights having been originally conceived to protect only works of art. However, copyright can only protect the literary or artistic form of scientific works, and not their content – that is, it protects only the less scientifically relevant aspects of the work. All basic scientific knowledge enters the public domain from the moment of its publication, as it is not patentable and is not protected by copyright law. This statement may

sound counterintuitive, but it is true. Since the protection resulting from copyright was not considered satisfactory by some, an international debate arose about the need to create a "scientific property". This debate serves as a basis for demonstrating the precariousness of copyright protection for scientific works – which can be done through some primary sources, such as Barthélemy (1922), Ruffini (1923), and UNESCO (1954). These historical and theoretical facts demonstrate that the oligopoly of the science publishing market is based on precarious copyright protection, which does not protect the content, but rather the form and which, through this protection of the form, controls access to the content, which in theory is in the public domain.

Theme 6: Copyright and scholarly communication: a conflicting relationship

The result of the precarious copyright protection of scientific works has resulted in what we call the "doctrine of assimilation of scientific works by literary works," according to which scientific works are only protected by copyright law as literary works, which leads the jurist to reduce the functions of scientific works, considering them only literary works. The doctrine of assimilation results in a multitude of conflicts, contradictions, and antinomies, which should be discussed in an introductory manner in this class. These aspects were presented in the doctoral thesis of the second author of this text, which was supervised by the first author (Couto, 2022). Some bibliographies in English can also be used in class to address this issue, such as Peukert and Sonnenberg (2017), Centivany (2011), Hilty (2007), Reichman and Okediji (2012). However, without a doubt, the work that addressed the subject in the greatest depth is the book by French jurist Xavier Strubel, *La protection des œuvres scientifiques en droit d'auteur français* (1997). The texts discuss the idea/expression dichotomy, the distinct modes of production of science and literature, the legal nature of the protection of so-called "factual works" (which would include scientific works), and the main resulting antinomy: the impossibility of applying the subjective criterion of originality (a requirement for the protection of works under copyright law). It is also interesting to address the definitions of "scientific work" used by jurists, contrasting these definitions with those presented in previous classes regarding scholarly communication. Finally, it is important to analyze the application of each of the property rights and moral rights in the case of scientific works, since in each of these rights there are bound to be situations of misapplication (here, it is important to bring up situations of difficulties experienced in everyday life – reports of this nature can be found on scientific publishers' blogs, as well as in many publications on the Scholarly Kitchen blog). These misapplications have led experts such as Elizabeth Gadd (2017) to state that there is a "cognitive dissonance" between the culture of copyright and the culture of scientific publishing.

Theme 7: Copyright in the context of digital libraries

Up until the previous class, the course dealt with general and very basic topics, including the theory and history of scholarly communication and copyright. From here on, the topics deal with more specific subjects and can be adapted more freely by the professor. We began by discussing the application of copyright in so-called “digital libraries”. This debate is relevant for two reasons: first, the course offered is part of the LIS curriculum, and it is likely that many of the students are librarians or are training to work as librarians in the future; second, some authors consider institutional repositories of scientific works to be types of digital libraries, which connects this topic to the general subject of the course. This class will cover the knowledge required for so-called “copyright librarians”, that is, the professionals responsible for managing copyright in a library and who is becoming an increasingly common position in libraries around the world. The bibliography to discuss this topic includes Tammaro and Salarelli (2008), Banerjee and Reese (2019), Frederiksen (2016), and Maurel (2008). The class can be structured as follows: a) definitions and concepts of digital libraries; b) relevant topics of copyright in digital libraries, such as the difference between publishing and communication to the public; c) institutional policies for copyright management; d) access control techniques; e) licensing agreements in the context of acquiring works for the library; f) the role of DRMs and similar.

Theme 8: Limitations and exceptions to copyright

This is undoubtedly one of the central themes of this discipline because it presents one of the most relevant legal foundations: the notion that copyright is not an absolute right and that it can be subject to limitations. In other words, there are situations in which works protected by copyright can be used freely by users, without these users having to pay or request prior and express authorization from copyright holders and without this use being considered an infringement of copyright. This topic is very complex because it deals with very opaque boundaries and requires a lot of theoretical debate. However, mastering it is essential for any information professional who deals with works protected by copyright. If we had to choose just one topic to teach, this would be the one chosen, given its current relevance. To discuss this topic, we used a guide that we co-authored and that was published by the Brazilian Federation of Associations of Librarians, Information Scientists and Institutions (FEBAB), called *Guia para bibliotecas: direitos autorais e acesso ao conhecimento, informação e cultura* (Couto et al., 2022). However, here again, the debate must be conducted concerning the local copyright law. Although there may be a common theory and basis, the law of each country may provide different rules for limitations and exceptions to copyright. The same textbook used in topic 4 likely contains a chapter on limitations and exceptions to copyright, which can be used here. If this is not the case, the professor will need to do some research to find a suitable reference. In any case, a good place to start is to look at the law of your country to find out what the limitation system is,

whether it is *fair use, fair dealing*, or whether there is a list of *limitations to copyright*. Based on the format of the limitation, it is possible to find a suitable bibliography. One thing is important to note: In law, there are many possible approaches and interpretations for the same topic, and Limitations to Copyright constitute a real arena for these interpretative disputes. Therefore, care must be taken when selecting the text to be used in this class. Texts that present more rigid and unfavorable views of users' rights should be avoided because they constitute an approach that modern doctrine and case law tend to reject. Currently, more balanced views are favored, which seek harmony between the rights of authors and the rights of users. A recommended text for introductory reading, although focused on the case of English-speaking countries (especially the USA), is the book by Aufderheide and Jaszi (2018), *Reclaiming Fair Use: How to Put Balance Back in Copyright*. There are other introductory texts on the subject, which are more comprehensive, including the doctrinal views of other countries, such as Chapdelaine (2017), Okediji (2017), and Balganesh et al. (2021). It is also worth highlighting the need to discuss the Three-Step Rule of the Berne Convention and all its importance for the international debate on copyright limitations – here, we strongly recommend the text by Geiger et al. (2010).

Theme 9: Marrakesh Treaty and accessibility

This topic is a direct continuation of the previous lesson, and it is recommended that it be presented next. The Marrakesh Treaty is the first international human rights treaty to create a limitation on copyright in international law, applicable to all signatory countries as a minimum requirement for the rights of people with visual impairments and other difficulties in accessing printed texts. Thus, for the treaty, the rights of people with disabilities become a limitation on copyright, as it allows protected works to be converted to an accessible format through adapted reproduction. This treaty is relevant to libraries in general, which are considered Authorized Entities, that is, entities that can act to convert works to an accessible format.It is also relevant to academic and scientific libraries because scientific works are among those that can be converted to a format accessible to people with disabilities – therefore, there is no longer any justification for a topic of such relevance to be disregarded by any information professional, especially those who deal with scientific knowledge. The treaty also introduces the notion of Beneficiaries, providing a comprehensive concept that includes not only visually impaired people but also people with other difficulties in accessing printed text (such as people with dyslexia or amputees who cannot hold a book). We recommend using the text *The Marrakesh Treaty: an EIFL Guide for Libraries* (2015), which has been translated into several languages and is available in open access on the EIFL website. Additionally, we recommend that the lecturer check the current status of the treaty in his/her country, to find out whether it has been signed, ratified, and regulated. It is also possible that the national law already contains some provision for limiting copyright in favor of visually impaired people – if this is the case, it is worth discussing how and whether

the Marrakesh Treaty will modify this previous provision in the law (for example, in the case of Brazil there was a provision for conversion to an accessible format, but only for blind people, so the Treaty expanded the list of beneficiaries previously provided for by law).

Theme 10: Controlled digital lending

Another interesting topic that can be addressed is Controlled Digital Lending (CDL), applicable to any type of work in a library, including scientific works. This topic has been the subject of intense debate around the world, as it is an innovative concept of library lending that is being applied in various contexts. As a fundamental and indispensable text, we recommend the article by Hansen and Courtney (2018), *A White Paper on Controlled Digital Lending of Library Books*. Basically, in CDL, the library digitizes its collection to lend it digitally; each item is then loaned through a digital substitute, respecting, in particular, the relationship between the number of copies of the work in the collection and the number of simultaneous loans. With this, it is expected that digital lending occurs in a c*ontrolled manner*, without interfering with the normal commercial exploitation of the work or causing unjustifiable harm to the legitimate interests of the authors (or, at least, that its impact is identical to that caused by conventional lending). The topic is also an important opportunity to discuss a fundamental concept of copyright law, which is the concept of copyright exhaustion (also called the "first sale doctrine") – this topic can be discussed based on the book by Péter Mezei (2018), *Copyright Exhaustion: Law and Policy in the United States and the European Union*. Finally, it should be noted that some librarians have stated that there is an important relationship between the concepts of Interlibrary Loan (ILL) and Controlled Digital Lending (CDL). Evidence of this is the creation of a working group at NISO, formed exclusively to discuss technical standards for the relationship between these two concepts, which resulted in the document *NISO's Interoperable System of Controlled Digital Lending* (which recently underwent public consultation). ILL and CDL can be used together as a mechanism for accessing scientific publications, which is why this topic should be treated with great attention in the course.

Theme 11: The open access movement: an introduction to public licenses

Although we affirm that a structural change is taking place in the debates on the paths toward open access to scientific publications in the world, this does not mean that traditional paths are irrelevant and do not deserve to be debated. Quite the opposite. That is why, in this topic, we dedicate space to present the history of debates on the open access movement, with an emphasis on its most legal aspect: the use of public licenses as an openness strategy. Topics such as the types of open access (the traditional color classification scheme) and the many infrastructures created over the years to foster openness should be discussed here. Many classic texts can be used for this class, since there is a large literature on the use of public licenses by the open access movement, such as Suber (2012), Willinsky

(2006), etc. From a legal perspective, it is important to select texts that explain the concept of licenses in the context of copyright transfer – in general, copyright textbooks provide a good explanation of the subject (the same text used for topic 4 will probably work). However, in this area, the most classic book is that of Lawrence Lessig (2004), *Free Culture: The Nature and Future of Creativity*. It should be noted that, as demonstrated by Couto (2022), Creative Commons licenses were presented by Lessig simultaneously with the Budapest Declaration. The simultaneity of these two debates may have contributed to the fact that, faced with many possible strategies, activists in the open access movement chose public licenses (and in particular the Creative Commons license) as their main tool for promoting openness. This class should also make a connection with the debate presented in the introduction of this text, which is the need for a change in strategy discussed by Couto (2022), Willinsky (2023), and Baldwin (2023).

Theme 12: Scientific authorship: credit, responsibility, and original ownership of rights

The topic of authorship is very relevant to the two disciplines covered in this course: copyright and scholarly communication. From the perspective of copyright, authorship can define the original ownership of copyright; from the perspective of scholarly communication, authorship defines precedence, credit, and responsibility. However, we can safely say that the concept of authorship and the criteria for its attribution are not identical for the two fields, with authorship constituting yet another example of antinomy or cognitive dissonance between the cultures of scientific publishing and copyright. Regarding the misapplication of the notion of “authorship” in science, we recommend first working with the text by Drummond et al. (1997), which serves as the basis for much of the subsequent discussion, including debates about the taxonomy of authors (e.g. CRediT). But there is much to discuss here, including questions about hyperauthorship (Cronin, 2001). To serve as a basic text for the class, the book organized by Biagioli and Galison (2003) remains indispensable and up-to-date. We recommend the chapter by Jaszi and Woodmansee, which deals specifically with the inconsistencies of scientific authorship in copyright. Some authorship criteria established by deontological standards can be compared in conjunction with the definitions of “author” in copyright law, such as the scientific authorship criteria of the ICMJE (International Committee of Medical Journal Editors), the COPE (Committee on Publication Ethics), Nature, in addition to the *authorship determination* scorecard of the APA (American Psychological Association). We also recommend comparing the authorship criteria adopted by the LIGO Scientific Collaboration (LSC), since they represent a borderline case that contributes to the occurrence of hyper-authorship.

Theme 13: Plagiarism and scientific integrity

This class is directly related to the previous class, which is why we recommend that it be taught in sequence. This topic can be approached from three perspectives: a) plagiarism from a historical point of view; b) plagiarism in copyright law (legal aspects); c) plagiarism in deontological codes (ethical aspects). For a comprehensive theoretical discussion, we recommend the book by Richard A. Posner (2007), *The Little Book of Plagiarism*. The history of plagiarism refers to the metaphorical use of the term, which should be explained based on the famous poem by Martial (poems I, 29 and I, 52). A brief discussion on the use of metaphors in criminal laws can be carried out. For the second point, the professor will need, again, to make use of local references, since "plagiarism" and the crime of copyright infringement can be defined differently from one jurisdiction to another. For example, in Brazil, the law does not mention "plagiarism" (this is an undetermined legal concept). The law only mentions "copyright infringement crime", which is a much broader concept, a type of skeleton criminal legislation. The last point may be the most complex to discuss, since "plagiarism" is a concept richly defined by ethical standards. We recommend making extensive use of the material produced by COPE (Committee on Publication Ethics), which includes guides and infographics on how a scientific editor could act when faced with suspicions of plagiarism. It is important to mention the possible types of plagiarism; these types may vary from author to author, but generally include intentional plagiarism, unintentional plagiarism, direct plagiarism, indirect plagiarism, self-plagiarism, etc. A crucial issue is the differentiation between plagiarism, parody, and pastiche, which should be carefully discussed. It is worth noting that this is a point of disagreement with the codes of ethics and the legislation, since, in general, the laws do not consider parodies and pastiches as cases of infringement (they are uses permitted by *fair use*), but the codes of ethics think otherwise. Another legal aspect to be discussed here is the difference between "plagiarism" and "illicit derivative work, made without authorization". Finally, it should be mentioned that the use of anecdotes is quite instructive and makes the class more interesting for the students. To this end, we strongly recommend that the professor spend a few hours studying famous and recent cases of plagiarism that were reported on the website Retraction Watch. This website is one of the subjects of this class since its mission is to publicize articles that were retracted from scientific journals, many of which were due to plagiarism.

Theme 14: Piracy and sharing of scientific works: the Sci-Hub case

We dedicate this last class to the debate on the piracy of scientific works, with special attention to the Sci-Hub case and the impact that this site had on the entire academic publishing system, including commercial and open access journals. As in the previous class, piracy can be discussed from multiple points of view. The term is a historical metaphor for pirate ships and cargo theft, but its contemporary use is much broader and has an advertising and

propagandistic character. It is a term used by the content industry as a driving force behind its enforcement work. In general, it is not a term defined by law; like plagiarism, it is a legally undetermined concept, since the law generally prefers to speak generically of "copyright infringement". To discuss piracy in the context of scientific publications, we recommend the book organized by Karaganis (2018), S*hadow Libraries: Access to Knowledge in Global Higher Education*. There is abundant discussion of the Sci-Hub case in Karaganis' book, but more up-to-date material can be found in recent literature. The case of Aaron Swartz should be presented in depth and respect; we also recommend discussing his *Guerilla Open Access Manifesto* (2008). Björk (2017) discusses the inclusion of piracy as a specific type of open access, the so-called "black open access". The industry's attempts to respond, such as the website "Where can I share it?", also need to be discussed. To discuss the scope of the use of piracy, we strongly recommend including the article by Himmelstein et al. (2018). This topic is very complex and may require a certain repertoire from the professor, especially to be aware of the lawsuits filed by publishers against piracy websites – to compose this repertoire, we recommend searching for opinion pieces and recent news on this topic on the following websites: Scholarly Kitchen, TorrentFreak, and Techdirt.

Final considerations

The general outline of topics presented in this work was tested in 2023 and is being repeated in 2024, so we can safely say that they work well as a course aimed at the joint theme of copyright and scholarly communication. The complexity of the topics and the great interdisciplinarity involved in the discussions were not an obstacle to the students' understanding, who, in general, were able to follow the classes without major problems. In all classes, one of the students was responsible for making comments on one of the complementary texts, so we were able to observe a great evolution throughout the course. At the end of the course, the students submitted an original article on copyright and scholarly communication and gave an oral presentation, which resulted in many interesting debates. In conclusion, we understand that the course offered was well received by the students, that the order of the topics facilitated their understanding of such complex subjects, and that we are filling an important gap in the training of human resources in Brazil. We also understand that our experience can be replicated in other LIS courses in Brazil and around the world, focusing on the need to deepen our understanding of copyright for what should be the next phase of the open access movement: the fight for legal reform.

We believe that our approach to expanding the debate on copyright in the context of scholarly communication can help expand social justice. The social function of copyright is to promote science and culture, not to restrict them. One way to materialize this social function is by expanding limitations and exceptions, but also by creating new legal devices that can make this law more balanced. With greater balance and better trained professionals, cases of

"copyfraud" tend to decrease. According to a popular saying, *the law is too important to be left only in the hands of lawyers*, which is why we advocate that information professionals take it upon themselves to debate this issue as a path to expanding social justice.

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