

8 Brazil: The Copy Shop and the Cloud

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In Brazil, debates about access to educational materials in higher education have been dominated for years by disputes about the legal and moral implications surrounding photocopying. Until 1998, Brazilian copyright law permitted anyone to make full, single copies of protected works for personal, not-for-profit use.¹ This limitation on copyright protection anchored a complex web of curricular and student practices that developed in the course of the 1970s and 1980s as photocopiers came into widespread use. When that permission was withdrawn in the copyright reform act of 1998 (Law 9610/98), publishers tried to recapture that part of the market—first by trying to persuade universities to negotiate licenses and later opting for police raids to break the copy culture on university campuses. For the most part, these efforts failed, leaving university copy culture largely unaffected and creating a stalemate on copyright reform that continues to this day. In the meantime, parts of the photocopying ecosystem have shifted online—though publisher enforcement efforts have undercut the emergence of any large-scale shadow libraries to rival the Russian examples from chapter 1.

While parts of the publishing ecosystem have moved toward open access models (in which Brazil has been a leading international force), undergraduate students' needs are still mostly served by conventionally licensed content and university life continues to rely heavily on infringement as a means for access. Attempts at collective management have failed, and business models for paid online access have—so far—offered debatable value for universities. As students and institutions move toward digital materials and models of access, Brazil is in a transitional period. Copyright law is clearly broken, but the balance of forces between publishers, universities, and state has not yet been able to consolidate around a new regime. The dominant role played by the Brazilian state in educational and scholarly publishing means that access to materials—more than in many other countries—is a question for public policy. This role has provided scope for experiments with open access, proposals for alternative compensation models, and other strategies for navigating the transition from print to digital. It also means that, in

a period of political instability and ascendancy of large business interests, those experiments are unusually vulnerable.

This chapter divides this story into three sections. The first chronicles the disputes surrounding photocopy culture in Brazilian universities, focusing on the legal controversies and enforcement actions that have led Brazil to the current impasse over copying in educational contexts.

The second section explores efforts to expand online access to educational materials in Brazil, including through general-purpose online services, publisher-backed platforms, open access and licensing projects, and of course, shadow libraries.²

The third section explores student practices, based primarily on a survey and focus groups conducted among undergraduate students in medicine, communication studies, and law in the city of Rio de Janeiro.³ The data offers a snapshot of this transitional period in which students and faculty use a mix of old and new strategies—print and digital, infringing and legal—to access materials.

Universities, Publishers, and the Battle over Copying

Xerox opened a Brazilian branch in 1965 (Rosa 2007, 73), but the photocopying era really began in the early 1970s, backed by a copyright reform in 1973 that introduced a broad, private copy exception that permitted full, single copies of protected works for personal, not-for-profit use. By the early 1980s, widespread access to photocopiers had turned this right into a foundation of university curricular practices.

Within most universities, photocopying came to be organized by the student unions for the different schools, by library staff, or by third-party contractors setting up shop within campuses. The State University of Rio de Janeiro (UERJ), for example, has around eleven copy shops in its main building, all operating under the supervision of the student union.⁴ The Pontifical Catholic University of São Paulo (PUC-SP) has a similar arrangement in which the law, literature, psychology, social sciences, economics, and social work schools all have a copy shop at their respective student centers, with the university library providing additional machines.

These shops act as distribution centers for class materials. Generally, faculty put folders containing class readings and handouts on file with the university copy shops. Students can request any professor's folder and copy the available materials. The copy shops do enforce university copying policies in some instances, but the ecosystem is large and complex enough to permit determined students to copy what they want. What they can't copy inside, they can copy in the shops located outside the universities.

The Brazilian Reprographic Rights Association (ABDR)

The main intermediary between publishers and universities is the Brazilian Reprographic Rights Association (ABDR, Associação Brasileira de Direitos Reprográficos). The ABDR was established in 1992 to negotiate collective licensing agreements with universities, which would permit the collection of royalties on works copied through university channels.⁵ As a means of encouraging universities to sign and enforce these agreements, the association also became a frequent filer of lawsuits against universities for what it believed to be illegal copying.

One of the association's first targets was the engineering students' union at São Paulo's Mackenzie University, which it sued in 1993 for distributing unlicensed reproductions of a book called *Exercícios de Topografia (Exercises in Topography)*. Despite the private copy exception in the 1973 law, the judge characterized the reproductions as works for sale and ruled in favor of the publishers.⁶ Legal incentives to sign licensing deals, nonetheless, remained relatively weak. The issue of commercial sales and profits could be argued away by drawing a distinction between acts of lawful copying by students and the actions of the copy shop operators hired to perform them. Only a few universities, such as São Paulo's Federal University of São Carlos (UFSCar), signed agreements with the ABDR.⁷

It was with these interpretative quirks in mind that publishers successfully campaigned for modifications in the private copy exception in 1998, when Brazil amended its copyright law. Article 46, II, of the 1998 law outlawed integral private copies of protected works and added additional, vague requirements for a copy to be determined lawful. With weaker legal cover for copy shop activity, the ABDR's hand was significantly strengthened. According to ABDR data, just one month after the new law came into force, ten universities had signed licensing agreements and fifty more were about to do the same. The terms for copy shops involved the payment of a monthly R\$100 (around USD\$32)⁸ fee, and an additional R\$10 (\$3.20) per one thousand copies.⁹ By March 1999, 126 institutions had made agreements with the ABDR.¹⁰ By 2004, that number had reached around two thousand. The agreements allowed for only 10 percent of any given item to be copied.¹¹

Not all of the publishers were satisfied with this outcome. In 1999, a faction within the ABDR concluded that the association was not successful enough in enforcing its licensing agreements, and that collective management for reprographic rights in Brazil had largely failed. These publishers established a dissident association, the Brazilian Association for the Protection of Editorial and Authors' Rights (ABPDEA, Associação Brasileira para a Proteção dos Direitos Editoriais e Autorais).¹²

The ABPDEA approached unauthorized copying strictly through the lens of copyright enforcement. In 2001, ABPDEA launched fifteen raids against universities, followed by at least thirty the next year.¹³ In 2003, it reported ninety ongoing lawsuits to a congressional investigation on piracy that had been launched that year in response to demands from the IP industries (Câmara dos Deputados 2004, 113). In the publishing community, the enforcement approach gradually prevailed. In 2004, the ABDR ceased to grant further licenses, and the ABPDEA dissident group was reincorporated into the association (ABDR n.d).¹⁴

In many respects, this was a sign of the times. CD and DVD piracy had become ubiquitous in recent years, and international copyright lobbying was at the apogee of its influence in Brazil and many other countries (Mizukami et al. 2011). When the congressional investigation completed its work, it recommended the creation of a National Council on Combating Piracy (CNCP, Conselho Nacional de Combate à Pirataria). The CNCP, in turn, authored and led a National Antipiracy Plan focused on increased enforcement—implementing domestically an agenda promoted by the content industry around the world.

For years, the ABDR approach defined the extreme wing of copyright politics in Brazil, both in terms of its direct actions against universities and its inflexible interpretations of educational limitations and exceptions, which played an obvious and critical role in Brazilian higher education. It is worth spending a moment on the latter issue. Broadly, ABDR argued (and still argues) that the only legal form of access is to buy a book or borrow one from a library. Any copying must follow the letter of the 1998 statute,¹⁵ which allows for a “single copy” of a “small excerpt” of a protected work, for the “private use of the copyist,” “made by the copyist,” “with no intent to profit.” A “small excerpt,” according to the ABDR, can never be defined in terms of a percentage of a work (as happens under U.S. fair use provisions, among others). Instead, it is limited to a “fragment of a work that does not represent its substance” (ABDR n.d.). Needless to say, this reading makes the limitation all but useless for educational purposes. It was a recipe for conflict in a country with a growing and mostly low-income student population, insufficient libraries, weak or nonexistent infrastructure for the book business outside the major cities, and several decades of reliance on photocopying for student needs.

Not all publishers remained on board. José Castilho, who ran Editora UNESP—one of the most important Brazilian university presses—expressed the press’s reasons for withdrawing membership from the association: “we left, not because we’re pro-piracy, but because [the ABDR] totally changed its philosophy. What was preventive and

educational became punitive action. And from the moment we heard, in an ABDR meeting, that university professors should be handcuffed, we decided to leave.”¹⁶

The 2004–2005 Crackdowns

Between late 2004 and October 2005, the association launched twenty lawsuits and initiated 150 police raids against copy shops and several flagship universities in São Paulo.¹⁷ On March 2005 alone, twenty-one universities were targeted. The police, acting on the ABDR’s request, confiscated course material folders from professors at the University of São Paulo (USP), Pontifical Catholic University of São Paulo (PUC-SP), Universidade Presbiteriana Mackenzie, Fundação Getulio Vargas (FGV), Universidades Metropolitanas Unidas (UniFMU), Universidade Paulista (Unip), Fundação Armando Álvares Penteado (FAAP), and the Escola Superior de Propaganda e Marketing (ESPM), among others.¹⁸

Universities initially attempted to negotiate. PUC-SP proposed to manage an intranet-based system to control on-campus copying, with the collection of royalties to be transferred to publishers. ABDR refused the proposal¹⁹ and instead offered universities a 40 percent discount on its members’ books for library acquisitions—provided the institutions monitored and enforced copyright on their premises. The universities rejected this proposal.²⁰

An alternative ABDR proposal involved university purchases of large number of copies of customized, preselected books, which they could then sell back to students at lower prices. This model was not compatible with how most institutions operated, but it found a major adopter in Anhanguera Educacional, part of Kroton, Brazil’s largest educational company, and its main competitor Estácio. Anhanguera had the scale and discretionary authority to implement a large-scale book-buying program—the Programa Livro-Texto—in 2005.²¹

Because the new enforcement-focused ABDR was built on publisher frustration with the earlier licensing models, the new round of negotiations emphasized book purchasing rather than licensing. This model had few takers, but two more years would pass before the ABDR tried licensing again through a system ironically called Pasta do Professor—“the Professor’s Folder.” Initially, Pasta do Professor allowed students to select from a list of previously licensed texts and order copies through copy shops located in participating universities. Copies came watermarked with students’ names and ID numbers to dissuade further copying.²² That model has changed over the years and is now managed by the online platform Minha Biblioteca (My Library), owned by a publisher consortium. As described by Minha Biblioteca’s CEO:

Pasta do Professor ... was created around eight years ago as an alternative to copy shops, to curb piracy. A device was installed on printers, so that ... information was sent to the ABDR that content was being printed, and royalties could be paid. This project ceased to operate on a retail model and became institutional, so that the university pays for the content. ... [Our] biggest client today is [the education group] Estácio, whose entire pedagogical concept is based around Pasta do Professor. So Estácio buys the content and makes it available to students, in print or digitally.²³

The more prestigious institutions targeted by the ABDR in 2004–2005, however, were in a position to resist ABDR pressure. In response, USP, PUC-SP, and FGV passed internal resolutions that established a common understanding of the permissible scope of photocopying in those institutions.²⁴ In 2010, after another ABDR-instigated police raid, they were joined by the Federal University of Rio de Janeiro (UFRJ).

The resolutions are very similar but diverge somewhat in the range of rights defined and justifications offered. All authorize the reproduction of chapters, articles, and other substantial portions of works for personal use—as well as copies of full works that have been out of print for at least a decade. All authorize the “professor’s folder” as means of distributing materials via the copy shops. All require the library to tag work that can be fully copied. Most authorized the copying of foreign works not available in the domestic market. Broadly, USP and PUC-SP were relatively generous in their interpretation of constitutional and copyright law, while FGV opted for a more conservative approach.

Publishers, predictably, were not happy with this outcome. The resolutions became one of the recurring complaints of the ABDR in domestic debates and formed the basis of its reporting to U.S. rights holder groups for inclusion in the U.S. Trade Representative’s annual intellectual property enforcement report—the “Special 301” process.²⁵ As the U.S.-based International Intellectual Property Association stated, in its 2005 submission to the USTR:

The most immediate concern of academic publishers in Brazil is the continued influence of Resolution No. 5213/2005, an administrative rule implemented by the State of São Paulo University (USP) almost four years ago. ... ABDR presented a formal request for revocation of this rule to USP, receiving a refusal on the basis that the rule is “constitutional” and grants access to education and knowledge. Thus the ruling still stands, so forming a terrible precedent for others to follow. At least two private universities—Fundação Getúlio Vargas of São Paulo (FGV-SP) and Pontifícia Universidade Católica de São Paulo (PUC-SP)—have implemented similar rules. This phenomenon contributes to an overall climate of disrespect for copyright in the academic context among universities in particular, and among government authorities more generally. (IIPA 2009, 158–159)

The ABDR’s continued pressure and threats against the universities did not have the intended dissuasive effect. Instead, it led to the emergence of a more aggressive position among the student unions at USP, PUC-SP, FGV, Mackenzie, Ibmecc-RJ, and Universidade São Judas Tadeu, which released a manifesto entitled “Copiar Livro É

Direito” (To Copy Books Is a Right). In the words of main representative of the group, they were fighting for “something that is already legal, that is, the right of access to information.”²⁶

2007–2017: A Stalled Copyright Reform

Copyright reform in Brazil has never been a simple or fast process. Before 1973, copyright was mainly regulated by provisions from the 1916 Civil Code (under the rubric of “literary, scientific and artistic property”) and by other sparse pieces of legislation. Between 1955 and 1973, the Federal Senate and Chamber of Deputies considered at least twenty different reform proposals, but none succeeded. The 1973 reform took place only after the military government sent a bill to Congress with the requirement that it be voted on within forty days.²⁷

The debate surrounding the 1973 bill took up proposals to outlaw the photocopying of texts without prior authorization from the rights holder, as exemplified by an amendment proposed by Senator Lourival Baptista:

The [proposed] provision seeks to incorporate into Brazilian law a principle that is already being considered by many other countries, with the goal of curtailing the abuse of non-authorized reproductions of the texts through photocopying, Xerox, etc.

We recognize that it is difficult to establish a practical means of monitoring and control of the fraudulent use of these modern machines, but, on the other hand, it is also true that it is necessary to impose the maximum possible number of obstacles, by every means, on this abusive procedure.

In that sense, under express legal prohibition, those who wish to transgress it—and we believe that accounts for most people—will abstain from such acts, unless they can locate the rights holder and obtain a license.²⁸

The 1973 legislators decided otherwise, however—recognizing even at that early date the importance of copying in Brazilian university life. Twenty-five years of student and faculty practices developed around that clause in the law. When the legislature took up copyright again in 1989—in a discussion that eventually stretched out for almost a decade—the outcome was different. Late in the process, ABDR succeeded in introducing an amendment that specified that copies would be lawful only if they consisted of “small excerpts” made “by the copyist.”²⁹ The justification for the amendment referred to the “enormous losses” incurred by publishers due to an alleged “1 billion” copies of entire books made each year.³⁰

The 1998 law opened the door to the more aggressive approach to enforcement described earlier, and more broadly signaled the alignment of Brazil with the larger international copyright enforcement agenda promoted by the United States (and U.S.-based movie, music, and software industries in particular). The election of a new

president, Inácio Lula da Silva, in 2002, however, introduced a major hitch in this rollout. The newly appointed Minister of Culture, the musician Gilberto Gil (and his successor Juca Ferreira) was heavily invested in the emancipatory promise of “digital culture” and the potential of a “creative economy” organized around free software, open licensing, and access to tools for cultural production and diffusion (Costa 2011; Dibbel 2004).

Within this framework, copyright became one of the main cultural policy issues of the new Ministry of Culture. The ministry’s internal copyright department was restructured and expanded, and the Intellectual Rights Directorship (DDI, *Diretoria de Direitos Intelectuais*) was created. Marcos Souza, a career public servant with a background in anthropology, was put in charge of the department, and a new copyright reform process began to take shape.

Procedurally, the Ministry of Culture’s main stated concern was that there was almost no participation by the public sector in important matters of copyright policy—leading to unbalanced policy that did not adequately account for the interests of the public. Substantively, it argued that the 1998 law was already outdated given the transformations brought about by the Internet and digitization. The Ministry of Culture noted in particular that the limitations and exceptions to copyright in the 1998 law were “out of alignment with the socioeconomic reality of the country” (Ministry of Culture n.d., a, 22–23).

Overall, the ministry placed a great deal of hope in collective rights management. The 1973 law had established a system of rights management unified under the Central Office of Collection and Distribution (ECAD, *Escritório Central de Arrecadação e Distribuição*). All collective rights organizations for music are affiliated with ECAD, which collects royalties and relays them to its member organizations. ECAD has been a consistently controversial organization, however, plagued by accusations of mismanagement and the target, to date, of five congressional investigations. Originally supervised by the National Copyright Council (CNDA, *Conselho Nacional de Direito Autoral*), state oversight was terminated by the 1998 copyright law, leaving ECAD an independent and—investigations would show—less accountable organization. One of the main objectives of the new copyright reform process was to reinstate some measure of state control over ECAD’s activities, and potentially to extend collective management beyond music, to all areas of cultural activity (Francisco and Valente 2016).

The new bill also significantly expanded the limitations and exceptions in Article 46. A broad general limitation was proposed that allowed the reproduction, distribution, and communication to the public of copyrighted works without previous authorization from the rights holder for “educational, didactic, informative, or research purposes, or

as a creative resource” if done “in the necessary measure to achieve the pursued ends, without affecting the normal exploitation of the work, and without causing unjustified prejudice to the legitimate interests of authors”—complicated phraseology intended to keep the measure in line with the international Berne Convention for the Protection of Literary and Artistic Works. The consultation draft also altered the private copy provision in Article 46, II, to allow for “the reproduction, by any means or process, of any legitimately acquired work, provided that it is done in a single copy, by the copyist, for personal, noncommercial use.”³¹ After the initial consultation period, the Ministry of Culture released a report consolidating the received contributions and proposing modifications to the text (Ministry of Culture n.d., b).

Then things got messy. Progress on the bill ground to a halt when newly elected president Dilma Rousseff (who also came from the Workers Party) nominated Ana de Hollanda as her Minister of Culture. De Hollanda was a musician with ties to the recording industry and was widely seen as pro-ECAD. She dismissed Souza and effectively brought the consultation process to a standstill (Silveira, Machado, and Savazoni 2013; Silveiras and Gouvea 2016). After a year of protest from civil society groups, Rousseff replaced de Hollanda with senator Marta Suplicy (serving from 2012 to 2014), who resumed the consultation process and reinstated Souza at the Intellectual Rights Directorship. Given the turmoil and the mounting evidence of ECAD’s dysfunction,³² the Ministry of Culture decided to carry out collective management reform in a separate bill. This bill passed in 2013 as Law 12853/13, and reestablished Ministry of Culture supervision of copyright collective management.³³

The copyright bill was not so lucky. The impeachment of President Rousseff in 2016 interrupted the consultation process once more. Michel Temer, who took office after Rousseff, abolished the Ministry of Culture in his first ministerial reform. When public outcry led him to reconsider, he appointed Marcelo Calero as minister, who fired Souza once again and stripped the Intellectual Rights Directorship of its new monitoring function—resulting in a de facto dismantling of the system created by the 2013 collective management reform bill. The policy plans of the new administration are unclear but so far have locked out the public interest groups in favor of the traditional copyright lobbies, which chafed under the demands for “balance” in the Lula and (Dilma Vana) Rousseff administrations.³⁴

Photocopies and Collective Management

The Ministry of Culture expected that copyright reform would solve the controversy surrounding photocopies in the universities by subjecting it to state-supervised collective management, with some room for unlicensed reproduction through limitations to

copyright. Schools would pay royalties on some portion of the total number of copies made at the university. Publishers would, hopefully, be satisfied with more recovery of campus materials costs than they had received under the existing practices.

The first draft of the Copyright Reform Bill (2010)³⁵ established that total or partial copies of literary, artistic, and scientific works made by photocopying or similar processes would be subject to remuneration paid to the rights holders *if carried out for commercial or for-profit purposes*. At first glance, then, it is questionable whether educational copying would be subject to compensation. Article 88-A, II, however, clearly imposes that obligation on commercial establishments providing photocopying services (i.e., copy shops) by requiring them to obtain authorization from rights holders or collective rights management organizations in order to make copies of copyrighted works. The user's intent—noncommercial, educational, or otherwise—is not taken into account.

Collection and distribution of the royalties would be carried out by collective management associations created for this purpose, and copy shops would be required to keep detailed records of the works and quantity of pages copied to allow for the proper identification of the money collected as compensation for copying. Publishers would be legally bound to give authors at least 50 percent of the proceeds.

This part of the proposal was very controversial. ABRELIVROS, which represents primary and secondary education publishers, raised concerns about the difficulty of collecting royalties.³⁶ The National Syndicate of Book Publishers (SNEL, Sindicato Nacional dos Editores de Livros), the most powerful book industry association in Brazil, claimed that the entire chapter on collective licensing for reprographic copies was redundant because the 1998 law already authorized such a system, and questioned the necessity of an explicit statement with regard to photocopies.³⁷ Free culture advocates, however, worried that the collective management system might override the proposed exceptions for private copies and education, which did not require compensation (Ministry of Culture n.d., b).

Despite the turmoil, the legal basis for a strong state role in the regulation of collective management was eventually created in 2013. The publication of Law 12853/13 provided a clear incentive for the creation of collective rights management organizations for reprographic rights. In August 2016, Brazilian book publishers announced the foundation of a new entity, the Brazilian Collective Licensing Association (ABRALC, Associação Brasileira de Licenciamento Coletivo),³⁸ which they explicitly advertised as an “ECAD for books” modeled after Norway's Kopinor and the U.S. Copyright Clearance Center. As of early 2017, however, its future was unclear. The gutting of the Ministry of Culture and its supervisory role appears to have put the new association on hold. A year and a half after its announcement, ABRALC doesn't have a website.

Collective Management and the Digital Environment

The Ministry of Culture pushed as hard as it did for collective management in photocopying because it had begun to see collective management as a solution to the wider range of challenges surrounding digital distribution and remuneration. Initially, the ministry had explored the creation of a “cultural flat tax” similar to William Fisher’s proposal of a “governmentally administered reward system” in which the Copyright Office would be in charge of compensating rights holders.³⁹ The Brazilian proposal (drafted by German researcher Volker Grassmuck, then at the University of São Paulo) involved the collection of a small fee at the ISP level, under the supervision of a new multistakeholder entity, which would then compensate rights holders for nonmarket online distribution of their works (Machado 2015). The distribution of these payments would be determined by sampling P2P traffic.

After the new collective management law was passed, however, and as unauthorized downloading habits shifted from P2P-based distribution toward harder-to-monitor streaming sites, the Ministry of Culture began to favor a collective management-based solution. Collective management offered a way to shift the debate from the punitive and sharply contested ground of copyright enforcement to the question of fair remuneration for artists and content producers. It also suggested a way to address growing concern with the power of large Internet companies to circumvent national policy on issues of transparency, remuneration, and taxation.

Domestically, the collective management approach meant transplanting the system established by Law 12853/13 into the online environment. For music, part of the plan depended on Brazilian courts extending the interpretation of a “public performance” to the online environment and streaming services, so that ECAD or similar associations would be allowed to collect and distribute royalties based on online streaming or downloading. Juca Ferreira—having already left the ministry—clearly expressed the strategy when celebrating a judicial victory at Brazil’s highest appellate court, the Superior Court of Justice:

The understanding by the STJ [Superior Court of Justice] judges that transmissions over the Internet characterize public performance of musical works and constitutes an originating fact for the collection of copyrights by the ECAD promotes an equilibrium in the new environment of musical consumption, and is of extreme importance for the future of our creators, performers and musicians, which from now on will have an instrument that will allow them to negotiate, in better conditions, the uses that the new platforms, dominated mainly by Google, Facebook and Apple, make of their music. (Ferreira 2017)

Infringement, in theory, would be dealt with through by a formal takedown system to be approved in the new copyright law. Sometimes this was advertised as inspired

by Canada's "notice-and-notice" system—an alternative to the American model that did not require online services to remove content—but the ministry never published a public proposal. The broader strategy involved establishing rules that subjected the distribution of content via online platforms, including services making books available online, to collective management. Following a period of public consultation, the Ministry of Culture issued these rules in May 2016.⁴⁰

This strategy also had an important international dimension. Brazil was a leader in debates at the World Intellectual Property Organization and other venues about digital revenue flows and the challenges to national control posed by the global online music and audio-visual services. A workable online collective management regime, in particular, required much greater transparency regarding traffic and access metrics and rights management information—including authorship and ownership metadata attached to every media item.

The principle statement of these concerns was a document called the "Proposal for Analysis of Copyright Related to the Digital Environment," authored with other Latin American countries and submitted to WIPO in 2015. By raising concern shared by content creators, governments, and Internet stakeholders,⁴¹ the document had a good chance of gaining traction at WIPO. However, Brazilian government leadership vanished with the impeachment of Rousseff. In its absence, it is unclear if these issues will be taken up at a multilateral level in the foreseeable future.⁴²

The Internet as Source

Increasingly, online sources compete aggressively with print sources as a means of access to educational materials. Graduate students are expected to read foreign language works and, for English language materials, the large international shadow libraries such as LibGen, Bookzz, and Aaaarg are the destinations of choice. At the undergraduate level, demand is predominantly for Portuguese language works, which none of the major international sites collect on a significant scale. Portuguese-language shadow libraries have emerged at several points in the past fifteen years, but none have survived long enough to become definitive archives. In nearly all cases, collections remain small and local, built from ad hoc sharing of materials between students or between students and professors, and usually focused on specific courses or degrees. These collections rarely circulate to the public at large, even if sometimes they end up on the Internet as thematically organized compilations posted to file hosting services and linked from Facebook or blog posts.

The defunct website *Livros de Humanas* (Humanities Books) remains, so far, the best example of Brazilian attempt at a large-scale student-built shadow library. *Livros de Humanas* was a blog that collected links to texts stored on file hosting services. It was organized by Thiago Cândido, a student of literature from the University of São Paulo, based on files uploaded by his colleagues and himself, often scanned from physical copies. As in so many other cases, the initial motivation was cost. “In 2009, the copy shop that served the school—illegal, according to ABDR, but without which no one can study at USP or any other Brazilian university—raised the price for a photocopied page to R\$0.15, a 50 percent increase,” Cândido said in an interview. “That motivated a group of students to share the content of their courses in sites like 4shared and Mediafire. The blog functioned as an index of those links.”⁴³

Unfortunately for *Livros de Humanas*, they had to contend with the ABDR. Beginning in August 2009, the ABDR began to systematically send takedown notices to hosting and linking sites and initiate lawsuits against supposed infringers. By July 2010, around forty thousand notices had been sent, with what ABDR alleged was a takedown success rate of 90 percent.⁴⁴ In 2014, the ABDR claimed to be removing links to pirated content at a rate of around eight thousand links per month.⁴⁵

This type of enforcement was not enough to keep infringing content offline, but has proved successful, at least so far, in deterring the emergence of large-scale, online pirate libraries. While the ABDR claims that *Livros de Humanas* was “just another website,” and that the lawsuit against it was one of at least thirty others that had been filed until then,⁴⁶ no other student-curated collection of digital materials like it has appeared since. The site was taken down as it was becoming the main source for digital Portuguese-language academic materials in the humanities and social sciences.

The community of users served by Cândido’s collection protested loudly against the lawsuit. *Livros de Humanas* gained support from publishers,⁴⁷ intellectuals,⁴⁸ and bestselling, pro-piracy novelist Paulo Coelho.⁴⁹ International support came from Neil Gaiman, who chimed in via Twitter that he was “Standing up for #FreeLivrosdeHumanas.”⁵⁰ Milena Duchiade, the former owner of Rio de Janeiro’s traditional humanities bookstore Leonardo da Vinci, wrote a letter of support, grounded on the fairness of sharing materials that are hard to find: “A few years ago, a boy at the University of São Paulo created a forum and was sued. I wrote a support letter, I got to know [about the case] from my son. I wrote him telling him that I supported making [those files] available. Why? Because Brazil has become a country of first editions, which are the first and only. Editions that have diminishing numbers of copies. How can you stop someone from having access [to those books]?”⁵¹

When it was taken offline, the blog provided access to 2,496 files—full-length books and academic articles—in the humanities, arts, and social sciences. Based on email requests that he received when running the blog, Cândido argued that the users of Livros de Humanas were mostly “students from Brazilian universities with terrible libraries.” During the last months of activity, the site was reaching more than ten thousand page views per day.⁵²

The ABDR won a favorable decision in the trial and later in the first appellate court.⁵³ An incomplete backup of the Livros de Humanas archive was uploaded to The Pirate Bay⁵⁴ and is still available as of January 2017, but to the best of our knowledge that archive has not been used as a seed for the construction of a new site.

As of early 2017, the website Lê Livros⁵⁵ is probably the largest shadow library for Portuguese-language content. Lê Livros differs from Livros de Humanas in part in that it is not exclusively academic. Among its 7,500 titles, Lê Livros has a wide range of literary and nonfiction content—as well as books in fields such as law, economics, and philosophy. Having learned from the experience of other sites, the developers of Lê Livros keep a low profile. The site’s “about us” page⁵⁶ traces Lê Livros history back to iOS-Books, a book-sharing site taken down by the ABDR in 2012.⁵⁷ This history claims that Lê Livros is run by “a group of students living in Portugal,” with the goal of “democratizing access to free reading, and consequently without any intent to profit.” Public information about the service remains sparse and, judging by our survey results, its impact on the ecosystem remains low.

Online Services as Informal Digital Libraries

Livros de Humanas had a two-tiered structure common to many shadow libraries, in which the index or catalog is maintained separately from file storage. This is partly a matter of convenience—the technical requirements of managing a catalog or index are minimal—but also a matter of safety as the search, indexing, and discovery services remain a step removed from the act of downloading unauthorized content. Dedicated search and cataloguing features aid discovery, sharing, and organization of content in these contexts, but are not indispensable. Social media sites, email lists, and blogs can do an adequate job. Often, Google Search serves as the glue that holds these resources together.

Among the file storage services (or *cyberlockers*), 4shared is one of the most widely used in Brazil. Like other file storage services, it is a general-purpose service with that hosts a wide range of content. It is also well known as a destination for unauthorized media and has been included in the USTR’s list of notorious markets.⁵⁸ Minhateca, where users can organize personal folders containing files and make them publicly

available, is a Brazilian service that plays a similar role. Minhateca was singled out by the recording industry in the IIPA's 2017 Special 301 submission: "One local cyberlocker site, minhateca.com.br, hosted more than half a million infringing music files that were reported by the recording industry and removed in 2016" (IIPA 2017).

Given this capacity, the status and responsibilities of file hosting platforms have been the subject of intense debate—driven by content industry lobbies that see them as for-profit enablers of piracy. The publishing industry groups have tended to follow rather than lead in this debate. The ABDR's strategy for online enforcement follows broader industry practice in relying first on takedown notices sent to services when allegedly infringing material is found. This practice is not grounded in law but in the norms that have developed around the U.S. Digital Millennium Copyright Act (DMCA), which established takedown procedures for the dominant U.S.-based Internet services. Despite legislative efforts, there is no law establishing a DMCA-like regime for copyright infringement in Brazil. When the issue came up during the public debates around the Civil Rights Framework for the Internet (the Marco Civil da Internet), which became law in 2014, content industries successfully lobbied to exclude copyright issues from the framework (Souza and Schirru 2016).⁵⁹ Discussions about a takedown regime and related issues of intermediary liability for copyright infringement were moved into the ongoing discussion about copyright reform.⁶⁰

The absence of an explicit regime did not prevent the development of an informal takedown mechanism: platforms usually comply when they receive notices. This de facto system has been backed by Brazilian courts, which have generally used a statutory damages provision conceived for pirate editions of books to determine penalties for online infringement. In cases where the number of infringing copies published is not determinable—as in most online infringement cases—Article 103 of the 1998 Copyright Law (Law 9610/98) sets damages equivalent to the price of 3,000 copies of the infringing work. This can quickly lead to absurd amounts in the context of online services, which may host or provide access to thousands of infringing works.

In general, the ABDR has tolerated services that comply with takedown requests. The meaning of acceptable compliance has been a moving target over the years, but one that even the "notorious" services like 4shared make efforts to accommodate. 4shared, for example, has a "partnership program" that offers options for content blocking and monetization, inspired by YouTube.⁶¹ Dropbox, which is used widely in Brazilian universities, has its own system for managing takedown requests across user folders.⁶²

More specialized publishing platforms such as Scribd and Issuu are also used to share books and journal articles—often with the same dual purposes. Issuu, for example, is used by major university publishers such as Saraiva⁶³ and Grupo Gen⁶⁴ to distribute

samples of texts, and—at the same time—by students to distribute scanned or natively digital copies of books and articles. Scribd, likewise, serves as an official storefront for publishers but also contains a wide range of user-uploaded infringing content. Provided that these platforms maintain takedown systems, or collaborate with publishers offering functionality that allows for blocking, monetization, or other types of measures, they have been able to operate safely, even with the occasional lawsuit. Over time, however, those conditions have become significantly more constraining on general use.

The Brazilian services *Passei Direto* and *Ebah* represent a different sort of platform for sharing and organizing collections of materials, similar in nature to educational startups like *Academia.edu* and *ResearchGate*, but with a focus on the undergraduate market. Both are structured as social networks for students, centered on the sharing of a wide range of materials—from syllabi, class notes, and tests to full copies of textbooks.

Like *Livros de Humanas*, *Ebah* was on the receiving end of a lawsuit filed by ABDR. Unlike *Livros de Humanas*, *Ebah* managed to settle.⁶⁵ As a condition of the settlement, *Ebah* now has a detailed section on copyright in its website that reads as if it were written by the ABDR—as well as strict takedown compliance.⁶⁶

Because students will always share materials, the scope available to developers of student-based services has been constantly tested by rights holders. In the words of a *Passei Direto* representative:

[The] materials are shared by the students themselves. So what we have is a team focused on evaluating if the materials have the correct names, if they are not in infringement of copyrights. ... That's basically it, we control the materials. Students are free to upload, however. We don't curate ahead of time; we don't know how to predict what the user is going to put on the platform. But the moment he does, we have to take care of it. [When we receive a notice,] we usually have 48 hours to take down materials. Usually, we do that within the day.⁶⁷

In 2014, however, ABDR sued *Passei Direto* at the request of affiliated publishers *Saraiva* and *Método*, regarding alleged infringement of two books. *Passei Direto* lost, and the publishers were awarded around \$190,000 (R\$600,000) in damages, but the case was settled as it reached the appellate court.⁶⁸ In 2016, two more plaintiffs—the publisher *Editora Manole* and a law professor named *Dimitri Dimoulis*—sued *Passei Direto* for copyright infringement. Both cases are pending a final decision at the time of this writing (Procedures 1005559-52.2016.8.26.0068 and 1014183-81.2016.8.26.0071, São Paulo). In February 2017, *Passei Direto* disabled the download function in its platforms. Files can now only be viewed within a window in the site—a change that *Passei Direto* claims was implemented to “protect the authorship of the materials published by students and curb their unauthorized reproduction.”⁶⁹

Publisher-backed Platforms

As elsewhere, Brazilian publishers have focused on institutional subscription-based access models. The leading example is *Minha Biblioteca*,⁷⁰ a platform established by Grupo A, Grupo Editorial Gen, Atlas, Manole, and Saraiva—all major publishers in the higher education market. *Minha Biblioteca* sells access directly to universities, which then make the service available to their students. In 2014, *Minha Biblioteca* took over administration of *Pasta do Professor*⁷¹ from the ABDR and now also allows individual users to purchase full books or book chapters.

Pearson's *Biblioteca Virtual Universitária* is a similar service offering content from sixteen publishers, and boasts serving 2.5 million active users with more than four thousand titles, ranging from textbooks to monographs.⁷² Whether these services effectively meet student needs is an unanswered question. In effect, institutional subscriptions became a viable business in Brazil only after 2012, when the National Evaluation System for Higher Education added access to online databases to the criteria for evaluating university libraries.⁷³ As explained by Mauro Koogan of Grupo Gen, one of *Minha Biblioteca*'s founders:

We started [*Minha Biblioteca*] two years ago, with difficulty, and now we have almost 500,000 students with access to the library. Basically the Ministry of Education said: "Universities, we know you do not have the means to buy [books], so we'll take digital libraries into consideration in the score you get [in our evaluation]." So universities say "hey, now that interests me." But if you're going to analyze the use that students make of this library, which has almost six thousand titles now, it's very low.⁷⁴

Open Licensing

Brazil has a very strong open access community, with public support for both traditional peer-reviewed "gold" models and pre-print-archive-based "green" models. This support passes through two main channels: IBICT (Instituto Brasileiro de Informação em Ciência e Tecnologia) and SciELO (Scientific Electronic Library Online), one of the world's most successful gold open-access projects.

IBICT was founded in 1954 with a mandate to support information science and libraries. In 1999, it started an online library that aggregated theses and dissertations made available by public and private universities.⁷⁵ Soon, the institute became a hub for capacity building and technical assistance in open access archives and journals:

Before 2003, our work was not directly related to open access, but open archives. ... The idea was disseminating theses and dissertations over the Internet without any access restrictions. ... Then, international open access gained a little more momentum, and ... IBICT started to work along these lines. First, we customized and offered training for the Open Journal Systems Software,

which we translated to Portuguese. We spent a few good years doing this sort of massive dissemination [of OJS], and because of that there was a boom in the number of open access journals. Parallel to that, we started working with institutional repositories.⁷⁶

The creation of institutional repositories received a boost through a requirement that graduate programs in Brazil make all of their students' output available online.⁷⁷ The authors of theses and dissertations can opt out—administrative rules cannot trump copyright legislation—but the rule effectively forced schools to set up their own institutional repositories.

Open access mandates for faculty and student publication, nonetheless, have not taken off. The only institution with a mandate is the Fundação Oswaldo Cruz (FIOcruz), established in 2014.⁷⁸ At the legislative level, a bill that would make open access mandatory for any work supported with public funds was proposed in 2011 and remains stalled.⁷⁹

The second major Brazilian open access project is SciELO, a publicly funded project that has grown into one of the largest portals for open access articles in the world.⁸⁰ SciELO operates on multiple levels—cataloguing articles, but also providing a methodology for journal publishing, indexing, and archiving. As described by one of the project's founders, Abel Packer:

SciELO began as pilot project in 1997. Between 1997 and 1998, we worked with ten journals. Back then, the Internet was just beginning. It was a very innovative project, and we faced lots of resistance to online publishing. But after a year we managed to create a methodology to put journals online, and after the pilot project [...] we established SciELO as bibliographic index [that links to] the full text. It's a mixture of index, publishing model, and repository, all open access.⁸¹

After Google Scholar started to index SciELO journals, page access numbers increased dramatically, jumping from 25 million a year in 2005 to 103 million in 2007 (Packer et al. 2014, 100). The SciELO model was also gradually adopted by other countries:

Right after we launched SciELO in 1998, the Chilean Nacional Commission of Science and Technology started an electronic journal program and decided to adopt our methodology ... Chile helped us export [to other countries] and SciELO became a network. ... [T]oday we have 16 countries, with around 1,000 journals and more than 500 thousand published articles. So it's a large operation, and SciELO Brazil functions as kind of a network secretariat. We maintain the methodology, and we are generally the ones who introduce innovations, although everyone is free to do what they want.⁸²

SciELO's success is not universal: it is strongest in the humanities, social sciences, and health sciences. Engineering and the hard sciences are comparatively underrepresented (Packer et al. 2014) because of the strong incentives for Brazilian researchers

working in those areas to publish in the closed-access, international journals controlled by major publishers.

In 2011, SciELO launched SciELO Books—a platform for digital distribution of books from university presses.⁸³ SciELO Books is not, however, fully open access: participating publishers, who also funded the project, insisted that some of the books needed to remain closed access. As SciELO Coordinator Abel Packer put it:

SciELO's hope, obviously, was to publish on an open access basis. But our publishers think that they should be self-sustainable, so we had to pollute SciELO by allowing commercial books. ... The project is extraordinarily successful [but] the commercial books have very limited sales. I think in the future they might sell more. But SciELO still maintains that academic books from universities should be published in open access. There should be a national funding policy that would allow this.⁸⁴

By February 2017, SciELO Books had an archive of 837 books, of which 545 could be downloaded freely. For the commercial books, SciELO provides links to Amazon, Kobo Books, and Google Play.

Brazil also has an active community involved in the development of open educational resources (OERs) such as textbooks and other instructional materials—although primarily for the primary and secondary levels and on a smaller scale than projects such as SciELO (Venturini 2014; Rossini and Castro 2016). There has been a push at the state and municipal levels for pro-OER legislation, and a bill emerged at the federal level in 2011.⁸⁵ But publisher opposition, grounded in fear that OER would undermine those lucrative markets, means there have been no major legislative successes to date. OER models will continue to play a role in educational policy conversations because of the obvious potential of open textbooks for Brazil's rapidly growing student population. But the momentum behind access-friendly policies during the Gilberto Gil/Juca Ferreira years in the Ministry of Culture has broken down in the wake of the impeachment and it is unclear how or when it will be reestablished.

The CAPES Journals Portal

The CAPES Journals Portal (Portal de Periódicos da CAPES)⁸⁶ is probably the most important source of online materials for most Brazilian researchers and graduate students. The site provides one-stop access to journals and databases for universities with graduate programs across the country.⁸⁷ In 2015, this included 37,818 full-text journals and 125 reference and abstract databases—made available to 436 university partners—from just about every major publisher, including Elsevier, Project MUSE, JSTOR, Nature, Oxford University Press, Cambridge University Press, Emerald, Taylor & Francis, SAGE, and Wiley, among others.

The CAPES portal is part of a well-established tradition of government-supported content acquisition for libraries and students. Brazil has a massive book buying programs for primary and secondary schools, the PNLD, which ensures the availability of basic textbooks for all students in public schools—at the cost of considerable market concentration in the sector.⁸⁸ Past government initiatives have, with different degrees of success, targeted higher education—the foremost example being the National Institute of the Book (INL, Instituto Nacional do Livro) in the 1970s. During that period, the INL coedited (sharing part of the costs of production), bought, and redistributed books to libraries (Hallewell 2005, 552–561; Figueiras 2015; Vahl and Peres 2016; Bragança 2009; Tavares 2014; Peres and Vahl 2014). More recent attempts to extend these practices to the university level, however, have been unsuccessful.⁸⁹

The CAPES portal proved, however, that journal articles were an easier proposition. The program initially focused on the acquisition of print journals for university libraries in the 1990s, and shifted to database subscriptions in 2000 after incorporating ProBE, a São Paulo state-based program initiated by a consortium of university libraries (Almeida, Guimarães, and Alves 2010). Over the following years, CAPES struck deals with a wide range of content providers and the number of full-text journals quickly increased.

As the cost of journal access has risen, the CAPES portal has become an increasingly expensive program. CAPES's journal budget went from \$21.11 million in 2004

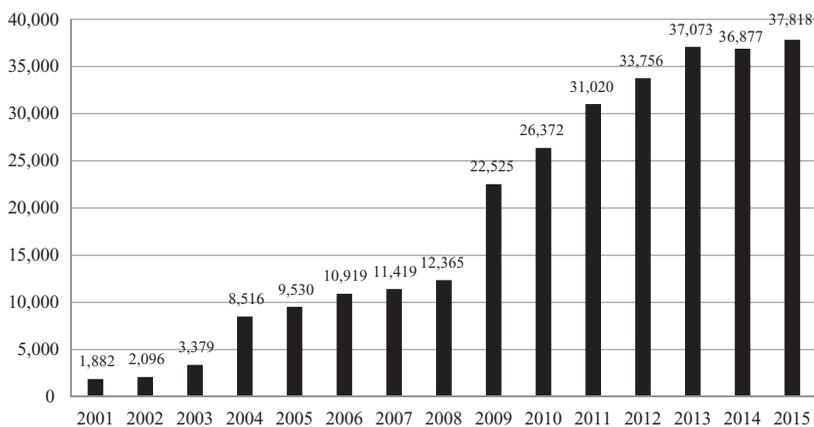


Figure 8.1

Number of full-text journals included in the CAPES portal (2001–2015)

Source: CAPES, “Relatório de Gestão,” 2014, http://www.capes.gov.br/images/stories/download/Contas_Publicas/2014_Relatorio_de_Gestao_CAPES.pdf.

to \$99.34 million in 2014.⁹⁰ In the current economic crisis, rumors about the demise of the program or a drastic reduction in the number of subscriptions, or both, are frequent.

Brazilian universities, in any event, remain extremely dependent on the CAPES portal. For many it is the sole source of journal access. The institutions that have the resources to license other databases often lack proper legal assistance to analyze licensing contracts. Libraries are often the weakest partner in a negotiation that involves powerful companies like Elsevier, Thomson, and Pegasus, resulting in nonnegotiable agreements surrounded by nondisclosure clauses. Another concern is the ephemeral and impermanent nature of the access to these databases, which can be easily terminated.⁹¹

And this, of course, is the dilemma. On the one hand, the CAPES portal is a fundamental resource for researchers in Brazil, providing free access, on a massive scale, to thousands of proprietary journals and databases. On the other hand, it also incentivizes a model of scholarly publishing that is viewed as exploitative by large portions of the academic community. This contradiction is well expressed in the words of Bianca Amaro, an open access advocate and a lawyer at IBICT: "I'm extremely in favor of the CAPES Portal. The CAPES Portal is invaluable to Brazil, and will continue to be during many years, decades, I think, unfortunately," Amaro writes. "But I think [it] should be reevaluated. What, effectively, are we buying? What sort of power do we have [in the negotiations]? I suspect we're still—and even more so after this internationalization project—hostage to these foreign publishers."⁹²

The internationalization project Amaro mentioned was an effort to bring international publishers in as distribution partners for one hundred Brazilian open access journals—on the assumption that international publishers could raise the visibility of Brazilian research. In other words, CAPES would pay international publishers to take control of top-ranked Brazilian open access journals, as a means to better position these publications internationally.

The proposal was disclosed by CAPES at a meeting with sixty journal editors in 2014, and included presentations by Elsevier, Emerald, Springer, Wiley, and Taylor & Francis.⁹³ The project received strong pushback from SciELO and the Brazilian Association of Scientific Editors (ABEC, Associação Brasileira de Editores Científicos), who argued that Brazilian publishers had more than enough technical capacity to produce journals with international reach, and that they should be the beneficiaries of any publishing incentives.

This episode is illustrative of the ambivalence surrounding CAPES's approach to the dissemination of scholarly materials. The internationalization project was seen as a

spillover from the years of proximity to and dependence on international publishers within the larger journals initiative, which is seen as both as a blessing and a curse. It reinforces the existing closed-access structures of academic journal publishing even as it grants free access to literature that would be cost prohibitive for many universities and research institutions in Brazil.

Student Practices

The preceding sections focused on institutional factors shaping print and digital access to educational materials in Brazil, from the role of photocopying and debates over copyright infringement to the expanding ecosystem of digital content providers and open licensing initiatives. As in the other country studies in this book, we also conducted focus groups and a survey to better understand how students access and share materials in the midst of this transition. As in the other surveys, we focused on fields with very different curricular requirements and, consequently, significant differences in student practices: medicine, communication studies, and law.

In our case, the survey is based on a representative sample of the population of undergraduates in the three fields in the city of Rio de Janeiro, the second largest in the country.⁹⁴ The focus on Rio means that we cannot generalize results to Brazil as whole—though we can make some informed guesses about the role of geographic differences. In general, we expect reliance on photocopying and unauthorized downloading to be stronger outside large metropolitan areas, which tend to have better infrastructure for legal access.

Means of Access

As in the other surveys, we asked students about how much of their materials were purchased new, purchased used, photocopied, and downloaded—and, in the last case, asking them to distinguish further between legal and illegal access. These percentages combine tranches from different student groups and so do not add up to one hundred. But they do offer a rough, eloquent impression of relative importance of a given means of access to materials, compared to other means. Libraries were not part of this series of questions. We address them in more detail in a later section.

Photocopies are the primary means of access to educational materials for students in medicine (38 percent) and communication studies (44 percent) students, followed by Internet downloads (24 percent and 29 percent, respectively) and purchasing new books (24 percent and 19 percent). For reasons that we will explore, law students described a very different set of practices, with new book purchases the main strategy for acquiring

materials (46 percent), followed by Internet downloads (25 percent) and photocopying (17 percent). Used materials play a very limited role across all three fields. More than half of surveyed students claimed to have bought no used materials during the current semester. Only 5 percent of students described heavy reliance on used materials.

Why so little uptake of used books? One of the main reasons appears to be shipping costs. The used book market in Brazil passes mostly through small bookstores that sell over the Internet, thereby requiring students to buy online and pay for shipping costs. According to Alexandre Camargo, the operations manager of Estante Virtual, the dominant online book marketplace, these costs often exceed the price of books themselves, undermining the cost rationale for students. According to Camargo, technical and professional books for classes nonetheless represent the largest part of Estante Virtual's sales.⁹⁵

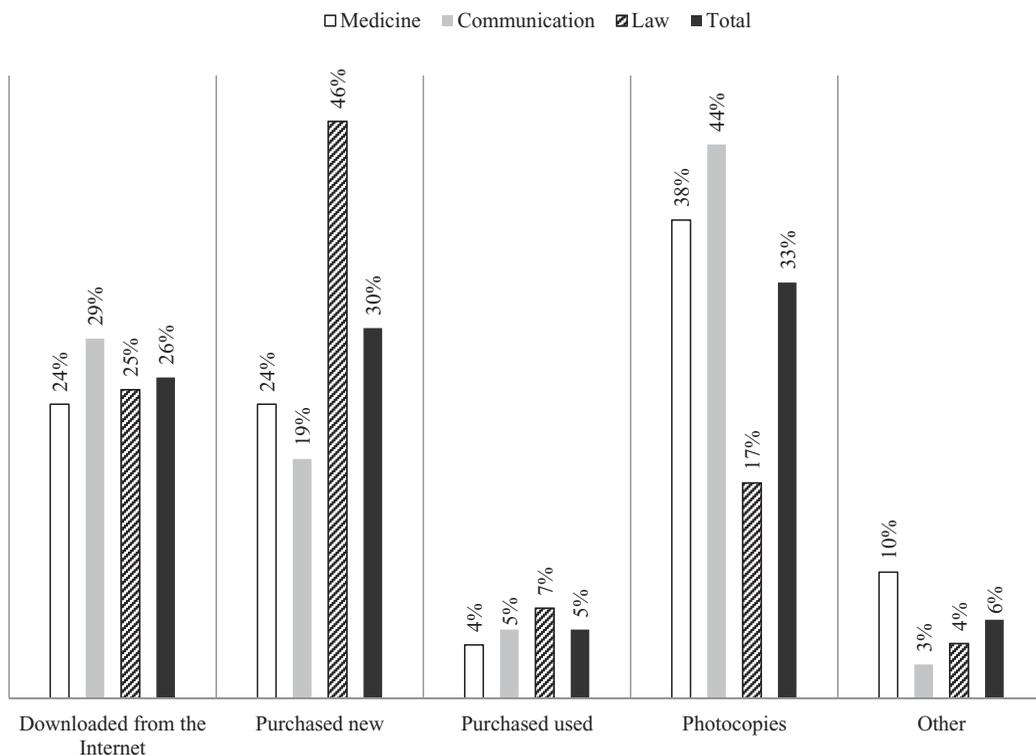


Figure 8.2

In relation to your bibliographic materials, what is your main source of access?

The major differences across fields reflect a number of factors, including the comparatively greater wealth of students in medicine and law. But the overriding one is the different curricular requirements in the different disciplines. Law and medicine students are part of textbook-heavy disciplinary cultures, with law in particular tied to rapid cycles of updated materials as legislation and jurisprudence evolves. Communication studies students are much more reliant on excerpts drawn from multiple books and monographs. None of the three groups rely heavily on journal articles at the undergraduate level and, consequently, none of the three are well served by the main open access initiatives, which have privileged scientific journal articles. SciELO Books is the notable exception for monographs, but it only has the partial participation of ten university presses and a very limited catalog of around five hundred books.

Books Despite publishers' concerns with photocopying, students do buy books. In law, just over 40 percent of respondents claim to buy most (81–100 percent) of their materials new. This investment is driven, as mentioned, by the need for current references that reflect changes in legislation and jurisprudence. But the value of building a personal practitioner's library for use after graduation also frequently appeared as a reason for the acquiring new books. This situation is flipped for students in communication studies and medicine, almost half of whom claimed to buy less than 20 percent of their materials new.

As elsewhere, students demonstrated a strong preference for printed material—including in their decisions about what to purchase. Eighty-two percent of students had purchased physical books but only 22 percent had purchased e-books—despite the nearly universal penetration of computers, phones, tablets, and other means of digital reading. “No one buys digital [books] on the Internet,” a law student told us in a focus group. Clearly some of this preference also reflects pricing strategies that equate paper and digital. As one medicine student put it, “with a digital book I'll pay the same price as a paper book and if I have to pay the same price, I'd rather have the paper book.”

Photocopying Photocopying is still the most important form of access to materials in Brazil—despite years of digital availability of educational materials. Over 90 percent of students get at least some of their materials by photocopying, with over 40 percent indicating that they get at least 60 percent of their materials this way. Communication studies students rely very heavily on photocopying; law students much less so, due to the disciplinary culture of book acquisition in that field.

One of the ways to understand this phenomenon is that the “pasta do professor”—the professors' folders used to distribute classroom material—tend to become small

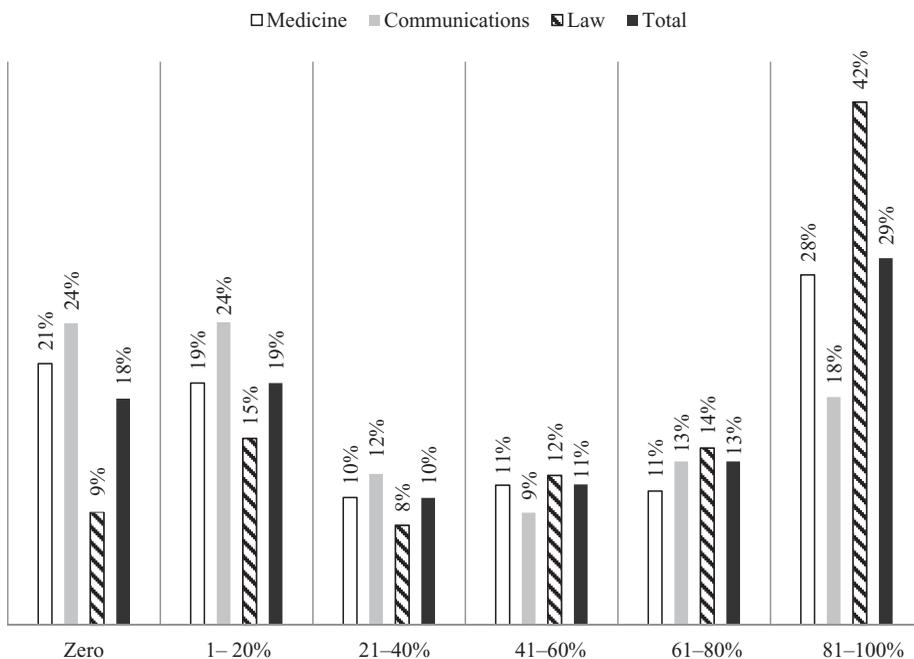


Figure 8.3

How much of your academic material is purchased new?

libraries in and of themselves. It takes time and effort to select class materials and make them available in copy shops. Once this task has been completed, folders can be used by professors from one year to the next, with small updates as necessary. As younger professors and students replace older generations, one can expect habits to change and preferences to shift in favor of digital sharing—even if many of those digital files are eventually printed. In the words of a law student, “Most professors are old, and the old ones use the copy shops the most.” We are still, nonetheless, living in a transitional period where the photocopy still competes with the cloud.

The sharing of materials via professors’ folders at copy shops is extremely common, with some moderate variation across fields. Overall, almost 86 percent of students in our sample indicated that they are able to copy at least some of their class materials from professors’ folders in copy shops. Roughly the same percentage claimed professors shared with them digitally.

For reasons we described earlier, most copying is done on campus (76 percent), even if limitations on copying are frequently imposed by universities. In focus groups, most students indicated that they had encountered university restrictions on copying entire

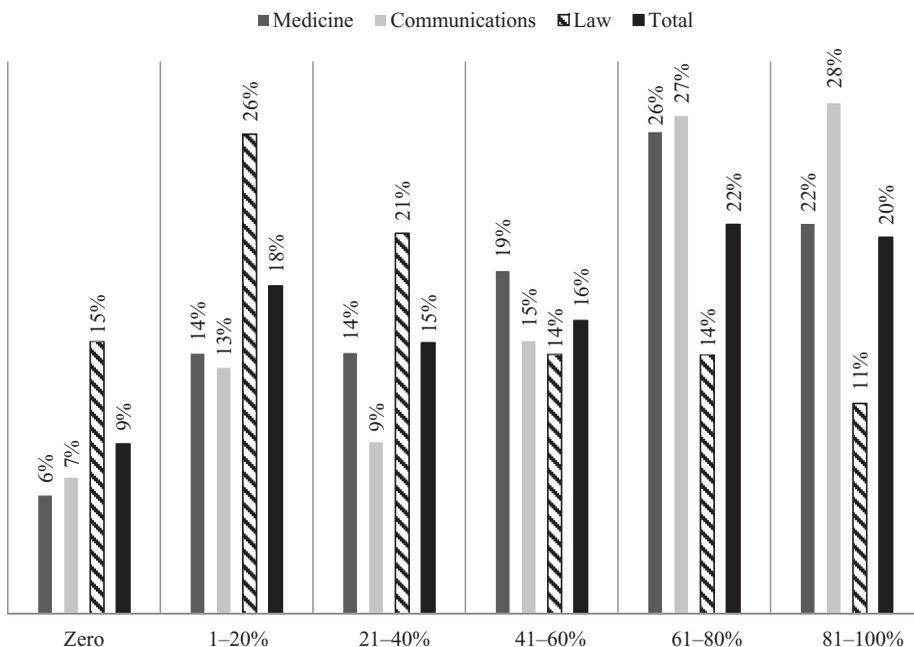


Figure 8.4

How much of your academic material is photocopied?

books, but also that such restrictions were easy to circumvent—either by making additional trips to the shops to copy different portions or by copying books outside the university campus, where restrictions are less frequently observed.

Downloading We also asked students what proportion of materials they had acquired from online sources during the current semester. They were asked to indicate what proportion they believed to be from legal and illegal sources, and to give examples of the latter. Overall, 23 percent of respondents said that they obtain at least 60 percent of their materials from sources they perceive to be *illegal*. Given the substantial number of nonresponses to this question and the likelihood of underreporting perceived illegal behavior, we think the actual numbers are likely to be higher. When asked how much of their materials they download from sources they believe to be legal, roughly a third claimed to acquire at least 60 percent of their materials from legal sources, and the percentage for the “zero” tier dropped to 16 percent.

The usual disciplinary spread is visible in responses to this question, but the differences are not dramatic. Among law students, 18 percent said that they downloaded

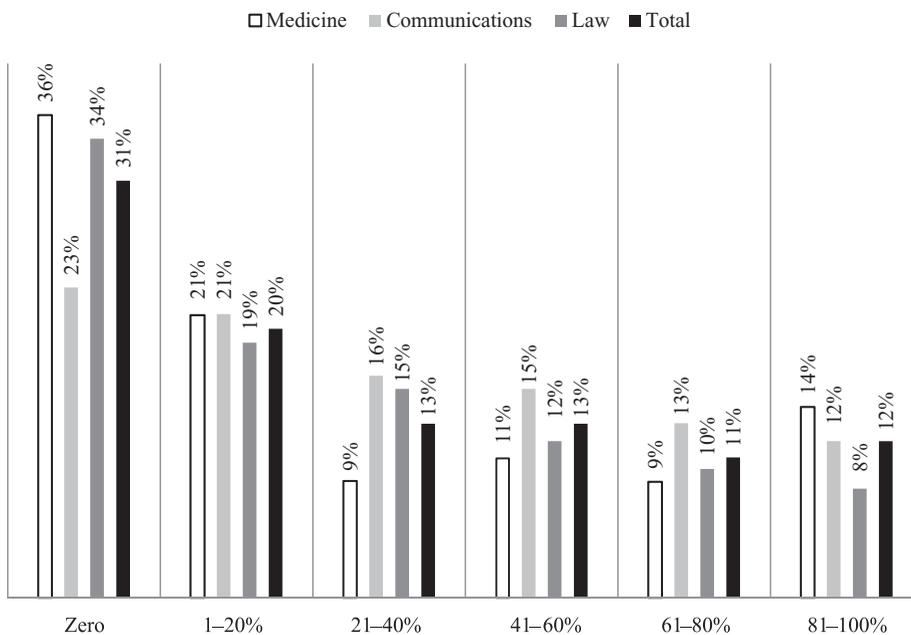


Figure 8.5

How much of your academic material is downloaded from sources believed to be illegal?

at least 60 percent of their materials from *illegal* sources. Among medical students, 23 percent did so.

As in the other country surveys in this book (and consistent with the wider literature on file sharing), students do a poor job of distinguishing legal from illegal access—and for a variety of reasons. The status of online texts can be unclear, the law is often poorly understood, and transgressions of laws and norms are routinely confused—commonly, for example, the difference between copyright infringement and plagiarism. Copyright awareness is low among the surveyed students: when asked to specify how much of a book can be legally copied under Brazilian law for educational purposes, 68 percent of respondents claimed ignorance.

When asked how students accessed material they considered “illegal” the responses ran the gamut from search engines and common file storage services like Dropbox and student social network Passei Direto to well-known hosts of infringing material such as 4shared and The Pirate Bay. Google Search—the entry point for most students to the web—ranked first by a wide margin: students mentioned the search engine 536 times, against 106 times for second ranker 4shared. As one student in the focus groups put it, “You put the name of the book and ‘download’ [in the search box], it’s super easy.”

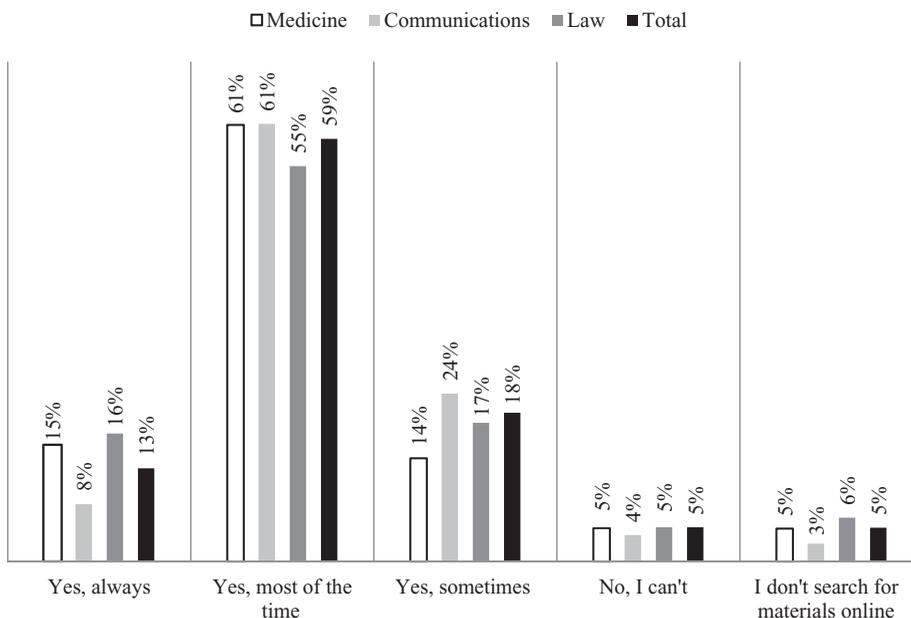


Figure 8.6

Can you usually find what you need online?

Student confusion was visible in the number of services mentioned that had no infringing content, such as medical abstracts database PubMed and legal websites Jus Brasil and Jus Navigandi. Jus Brasil aggregates legal opinions and blog posts; Jus Navigandi is a web portal for law news and articles. Wikipedia was the third most-cited source, likely due to faculty requests that students not use the site as a reference for research.⁹⁶

As for the availability of digital materials, 59 percent of students indicated that they can find what they look for online “most of the time”; another 13 percent indicated that they could “always” do so.

Libraries Though often described as in a state of crisis and frequently unable to meet student demand for books, libraries are a very important part of student life in Brazil. The great majority of students make use of their school’s libraries—over 80 percent in our survey. This roughly correlates with data from the National Student Performance Exam survey, which suggests that roughly 45 percent of communication studies students and 63 percent of law students make use of the library at least once a week

(INEP 2012a,b). Most of those library users indicate, moreover, that they can find what they need for their classes—some 82 percent in our sample.

These results reflect the relatively strong connection between teaching and library acquisition strategies in most Brazilian universities. Libraries have access to syllabi and—when resources permit—purchase and make available required materials. Since 2004, these linkages have been built into the Ministry of Education’s evaluation of undergraduate programs (SINAES), which requires that the library acquire materials from a series of model syllabi developed for each field. In practice, such acquisitions are often limited by budgetary constraints (Maia and Santos 2015) and by the frequent divergence between syllabi and actual classroom practice.

Personal Collections

Personal collections of e-books remain rare at the undergraduate level. Only around 20 percent of students claimed to have collections—closely tracking the percentage of e-book buyers. One possible explanation is the perceived adequacy of the larger online sources, which provide ad hoc access to files stored on the Internet. Another is the continued preference for print-based reading.

These numbers increase significantly when the question expands to include “papers, articles, and other materials.” Around 42 percent of students have personal archives of this sort, rising to half of medical students (who make more systematic use of online article databases than others).

The most consistent explanation of these practices is that collections of digital resources are created as need dictates—tied to specific groups of students or courses and utilitarian in nature. They consist of whatever is needed to complete an assignment or pass a given test or course. This is a reflection of the ephemerality of the materials ecosystem. For most students, materials are discarded once they fulfill their function. In this respect, students approach digital materials much the same way they approach photocopies.

Sharing

Sharing of class notes, readings, and other materials among students is the norm across all three fields, ranging from 71 percent of respondents in law to 92 percent in medicine. Brazilian students sometimes bundle these materials into “apostilas,” which circulate within classes and to new students. Fields differ in the degree of organization of this practice—again following distinctive curricular requirements and patterns of mentoring. Medical students consistently reported the highest degree of organization, commonly organized by individuals tasked with organizing and distributing materials.

Medical students also reported systematic sharing between older and younger students, as part of a larger structure of mentoring across levels. One student reported: “We have a different class each year, so a student from the second year will choose a student from the first year, a freshman who is just coming in, to pass on materials, tips, exams, and usual, at least in my time, paper materials. Nowadays, it’s a lot more digital: a thumb drive with everything is passed on to the freshmen.”

By the same token, it is only in medicine that these practices play a dominant role. Such practices clearly exist among law and communication studies students, but our results suggest that they are not as formalized or ubiquitous.

Students mostly share via email or Facebook groups—in both cases leveraging a variety of other tools such as listservs and Dropbox accounts, or workarounds such as the use of a dummy email account as a classroom message board and document archive.

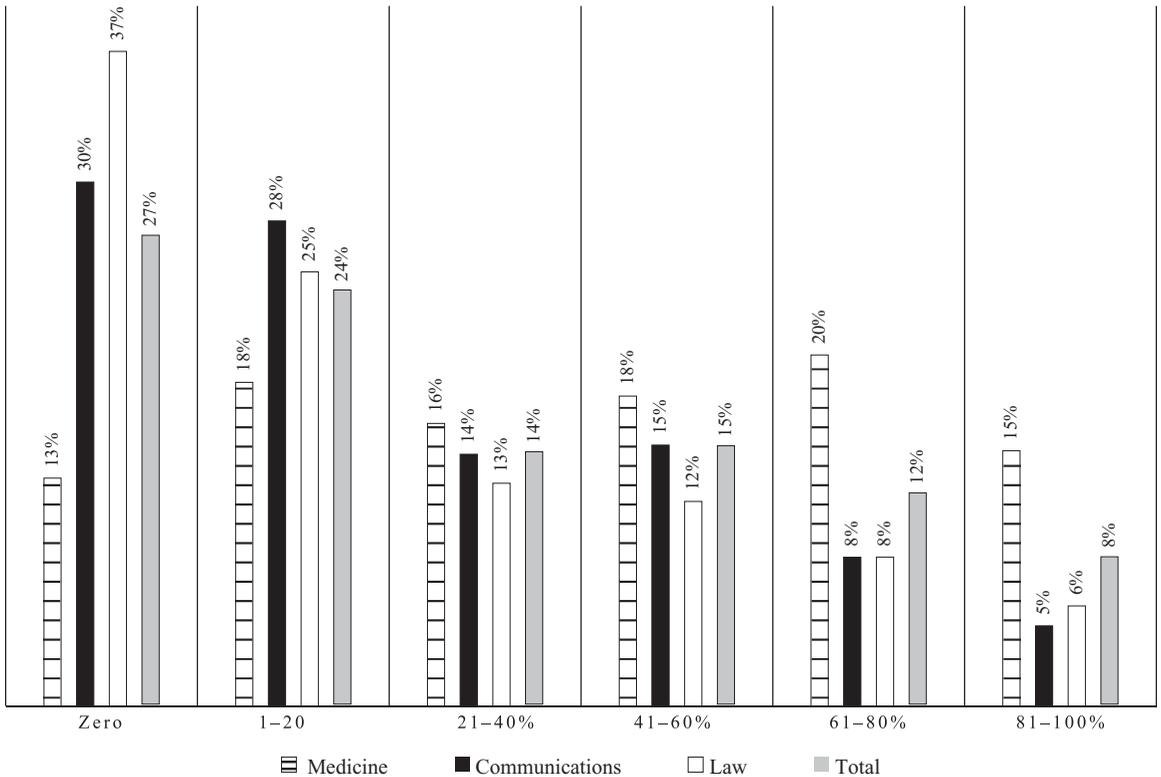


Figure 8.7

How much of your academic material is copied from fellow students?

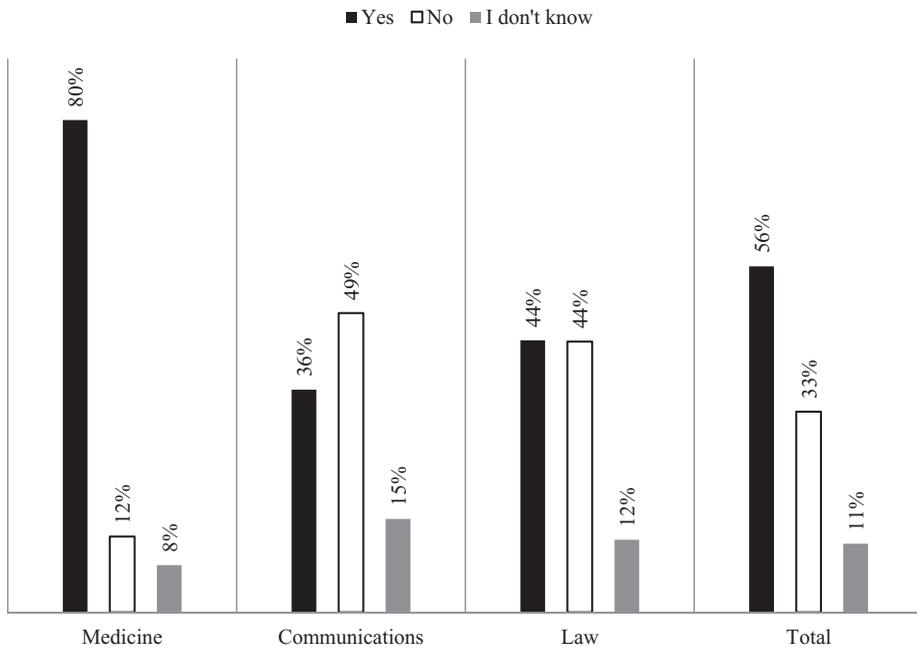


Figure 8.8
Are materials shared downstream (with newer classes)?

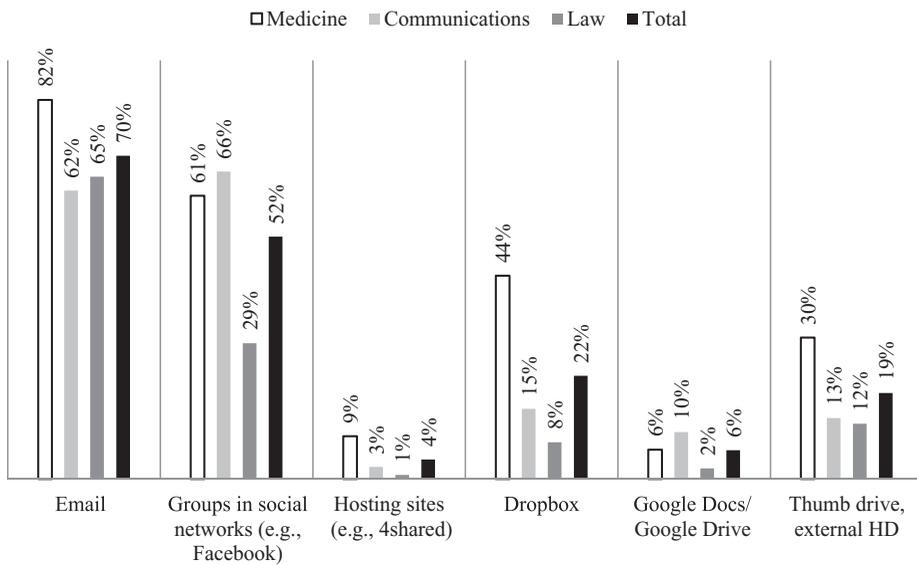


Figure 8.9
How do you share materials with your colleagues?

Dropbox—and to a lesser degree, Google Drive—are the hosting platforms of choice for document sharing, but fall considerably behind email and social networks in classroom use. Facebook is a very common tool for classroom support and, in many cases, is preferred to home institution learning management systems (when they do exist). Information about courses, discussions/forums, the organization of content, and last-minute notifications are all efficiently supported by Facebook's "group" tool.

Faculty routinely facilitate these small group exchanges, with older faculty tending to favor the pasta do professor while younger faculty rely more on the online ecosystem: "Sometimes the professor will write down the email of someone from the class, a student, and will share with this student. The student is then responsible [for sharing with the others], like an assistant."

The practice of taking photos of print materials is also very common. 60 percent of our respondents indicated that they do so; 83 percent of these said they share the photos with colleagues. This practice extends to wider documentation of classroom activities, including work presented on the blackboard, presentation slides, and class notes. Perhaps most importantly, it also represents a low-cost alternative to photocopying and means of amortizing investments in expensive devices. As one student explained, "I don't take photocopies, I use my iPad. What I don't want to spend money, I'll take a photo of the photocopy. I'll take it from someone who took the photocopies, who went there every week and paid 30, 20 reais ... and I'll patiently take photo after photo with my iPad."

The specific mix of technologies used by students is clearly a moving target, as services drop in and out of use and new resources become available. Email, Facebook, and Dropbox are at the center, surrounded by the wider social web that supports small-group communication and file storage. Cameras on cell phones and devices provide a constant stream of documentation of classroom materials and activities. Collectively, these tools define a sharing ecosystem that falls between the copy shops and the high-level shadow libraries.

Pricing

The price of materials is clearly the main driver of these copying practices, but other factors also play contributing roles. Student copying is shaped by a wide range of motivations, from the convenience of digital formats, to the utility of owning materials in the long term, to poor availability through bookstores or the library. Across all of the focus groups, however, pricing provided the main ethical framework for unauthorized copying. "In a school such as ours, in which books are absurdly expensive, it should be legal [to copy books for educational purposes]. But if, for example, books were sold on a

Table 8.1

Price estimates for a semester of materials (USD\$, average, rounded up)

	Medicine	Communication studies	Law	Total average
New	101	37	96	78
Used	53	26	50	42
Photocopies	38	22	20	27

relatively affordable price for everyone, I believe you could decide that ‘Really, you can only photocopy part of the books.’ But only if prices were affordable.”

Affordability is, of course, a relative term that depends on student resources, perceptions of value, and other costs. A study by the University of São Paulo’s Research Group in Public Policy for Access to Information (GPOPAI-USP), however, found that for three-quarters of students enrolled in ten of the university’s courses, the costs for a semester of materials—out-of-print books excluded—was close to or above the average monthly household income for students (Craveiro, Machado, Ortellado 2008, 35–36). Pricing studies carried out by the Brazilian Consumer Defense Institute (IDEC 2008, 2012) also concluded that high prices, out-of-print materials, and deficient libraries made piracy unavoidable to many students (IDEC 2008, 2012). In 2012, a medicine student at the University of São Paulo would have had to spend approximately \$3,405 to buy all the materials for the first semester—an amount that was almost six times the average income of employed workers in São Paulo (IDEC 2012).

Answers to our question about how much students spend on new books, used books, and photocopies in a semester show a substantial difference between medicine, communication studies, and law, with materials in medicine the most expensive and communication studies the least.

Students make their own calculations each semester and understand the relative costs of different strategies for acquiring materials. When we asked what percentage of their materials they would be able to buy if copying was possible, only 25 percent of students said they would be able to purchase nearly everything (81–100 percent of their materials); 38 percent said they would be able to buy, at most, 40 percent of materials.

Conclusion: Taking Access for Granted

It is hard to talk to students, professors, librarians, publishers, and bookstore owners these days and not come away with a sense of crisis playing out across the whole ecosystem. Libraries face difficult increasing costs, decreasing budgets, and unsettled terms

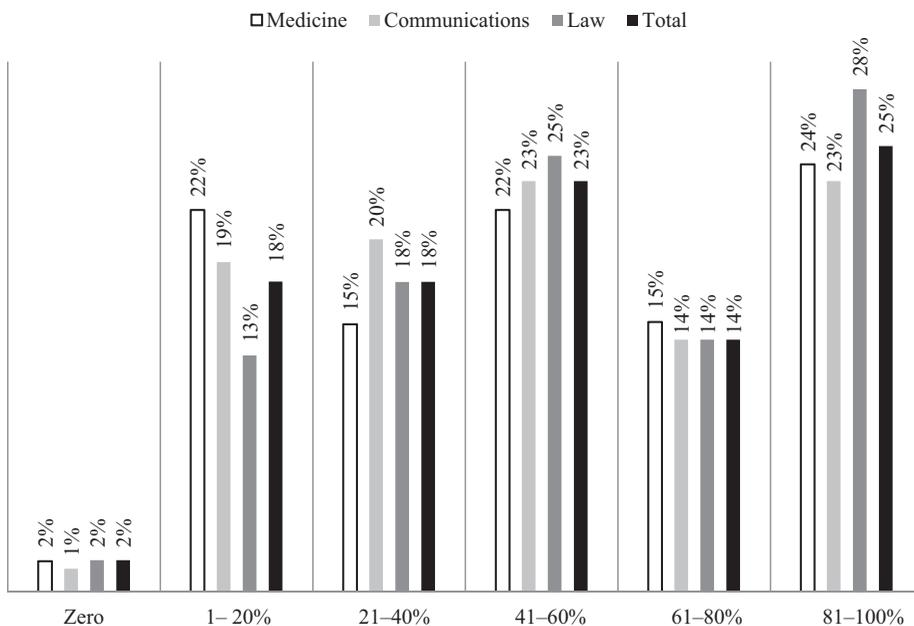


Figure 8.10

How much would you be able to purchase if you weren't able to copy?

for the shift to digital lending. Bookstores face a process of market consolidation that is driving smaller players out of business. Three of our informant booksellers closed shop since we interviewed them in 2014. The publishing business is also replete with the language of crisis.

And not a small one, we are led to believe. The Brazilian book industry is undergoing a decades-long “crisis of monumental proportions,” as Earp and Kornis argued roughly a decade ago (Earp and Kornis 2005, 2008). Data on these issues in Brazil is of questionable quality,⁹⁷ but the same sources indicate that the publishing industry grew an unimpressive 5.79 percent between 2005 and 2015, mainly supported by government purchases of books for primary and secondary education. Some of what the industry calls crisis, then, is about slow growth and structural change relative to the otherwise rapid growth of the Brazilian economy in the period.⁹⁸ Another part of the story is that Brazil, in general, continues to do poorly in surveys of reading habits,⁹⁹ with the result that only a tiny percentage of household expenses is devoted to reading materials. This situation did not change between 2002 and 2009, despite a 4.6 percent increase in income between those years (Beltrão and Duchiede 2014).

In many respects, the perception of decline reflects the failure of the educational publishing ecosystem to effectively respond to the expansion of higher education, which saw the student population increase from approximately 2.7 million in 2000 to 6.6 million in 2015.¹⁰⁰ Although some of this growth was absorbed by the public system, the most significant change was the boom of private institutions after regulations on the sector were relaxed in 1996.¹⁰¹ Between 1997 and 2006, the number of private institutions skyrocketed from 689 to over 2000. By 2015, private higher education enrolled 4.8 million students, compared to 1.8 million in public institutions.¹⁰²

From the earliest days, the publishers' association ABDR was profoundly concerned with this expansion. While a larger student population meant a larger potential market for educational materials, ABDR feared that that market would be lost to copyright infringement—particularly in the new schools, which generally served low-income students. As ABDR lawyer Dalton Morato observed: “the average profile of a student, today, is that of a person who works during the day so that they can study at night in a private institution and who has no capacity to pay anything else other than tuition.” Indeed, comparisons between the growth in student enrollments and alleged declining book sales became a fixture of ABDR discourse. Morato again:

the number of copies of university books in Brazil has fallen, or better yet, free-fallen, from 30,636,000 copies, in 1995, to 16,875,000 in 2004—a decrease of over 44 percent. During this same period (from 1992 to 2003), the average income of the Brazilian worker grew 16.3 percent. If this decline continues, economic activity geared towards the university book sector will become economically impossible and will not take place.¹⁰³

As we have seen, this reasoning oversimplifies a complex scenario. Concerns for affordability drive copying—and not exclusively among low-income students—but it is clear that students also purchase books, and that issues of convenience and accessibility play significant roles. There has never been a serious prospect of recapturing student copying activity under the current publishing model, and trends in higher education enrollment have made that task more difficult, not easier.

Stresses on the ecosystem are, of course, not evenly distributed. Restructuring and consolidation have their winners. When asked about the state of the book industry, Mauro Koogan, the head of a major publishing group, put it differently:

crisis is a word that is perhaps a bit strong ... for example, we are debating the matter of bookstores a lot ... it is obvious that the more bookstores the better, but it's useless to protect a bookstore that has yearly revenues amounting to 50,000 reais, because it's not sustainable [as a business] ... in the same way, if you have a publisher that publishes three books, it won't sustain itself as business, so it's in crisis. But it's in crisis not because the publishing market is in crisis, but because it's not a sustainable business. What I think is happening with books, and what I can say applies to

my area, which is university, scientific, and professional books, is a change in paradigm, in how people learn, and what they use to learn and keep up-to-date. And there was a great change there, partly because of technology.¹⁰⁴

Koogan has a point: the Brazilian publishing sector has a handful of conglomerates at the top and thousands of small publishers at the bottom (Barcellos 2010), producing small print runs of books that are generally cut off from significant distribution. As Milene Duchiede put it earlier in this chapter, Brazil is a country of “first and only editions.” But this is largely a legacy of public investment decisions, not inexorable publishing trends.

In Brazil, the state plays the dominant role in educational and scholarly publishing through a number of channels, of which the purchasing of materials for primary and secondary education is only the most visible. This public investment shapes the current system at every level, both directly and indirectly, from research grants to university staff salaries to tax breaks for the publishing sector.¹⁰⁵ It has led to market concentration in primary and secondary education publishing (Cassiano 2013), turned Brazil into the major Latin American subscriber to journal databases through the CAPES portal, and funded much of the output of university presses through public research foundations, much of which remains available only on closed-access terms.

This same public investment creates a powerful lever and, indeed, obligation, to change the ecosystem in ways that advance the public interest. The open models now in circulation, in particular, provide an attractive alternative to public support for an industry that has never cracked the problem of affordability and that—in its ABDR guise—has waged war on the actual practices that enable the expansion of Brazilian higher education. Rethinking public investment as viewed through the lens of access, with different strategies for textbooks, journal articles, and monographs, is a long-overdue task. So is the task of copyright reform: many curricular needs involve materials that can’t easily be “opened,” such as out-of-print works and books with limited print runs. Broader copyright limitations would facilitate access to such works and, in turn, could coexist with a fair collective-licensing system for uses that go beyond the limitations.

In the end, most Brazilian students can take a basic level of access for granted, whether through book buying or photocopying, via the university library or loaned from a colleague, or downloaded from a shadow library or class Facebook group. Most students will get what they need. Unfortunately, since 1998, most of those strategies have made criminals out of students and faculty, and put universities through contortions as they try to guarantee the basic structure of access to materials for their students. Solving this problem, as we have seen, is not rocket science, but the recent turn

in Brazilian politics appears to have put it temporarily out of reach. The question for the future, in Brazil and elsewhere, is not access vs. deprivation, but *how* and *under what terms* students will get the materials they need.

Notes

1. "The reproduction of a single copy, of any work, as long as it is not intended for for-profit use" (Article 46, II, Law 5988/73). This provision was an innovation of the 1973 law; previous versions of this exception in the Medeiros and Albuquerque Law (Law 496/1898) and the Civil Code of 1916 did not permit the full reproduction of copyrighted content for private use. Neither of these laws, however, was drafted in a time when photocopying technology was readily available and deployed in universities.
2. Research for the first two sections of this chapter draws on around twenty in-depth, semi-structured interviews with a variety of actors and stakeholders involved in the production, consumption, and access of the ecosystem, including government representatives, professors, publishers, librarians, bookstores, and entrepreneurs.
3. Focus groups were undertaken with students in the same fields. Clave de Fá Pesquisas and Elizete Ignácio collected data in 2014, under supervision of the authors, and the technical guidance of Kaizô Iwakami Beltrão, who designed the sample and helped with the treatment of the quantitative data we draw from.
4. These generally rent space for third-party copy machine operators. Interview with Gláucio Pereira, *Quartet Editora* and *Livraria República*, April 15, 2015.
5. Felipe Lindoso, "Mais uma entidade?," *PublishNews*, August 25, 2016. www.publishnews.com.br/materias/2016/08/25/mais-uma-entidade.
6. "Juiz proíbe que faculdade venda 'xerox' de livro," *Folha de S. Paulo*, December 16, 1993, 3-2.
7. "UFSCAR assina convênio e vai pagar direitos sobre reprodução de livros," *Folha de S. Paulo*, September 19, 1996.
8. Conversions between Brazilian reais and dollars were made on March 31 and April 1, 2017, using the rates provided by xe.com.
9. Jotabê Medeiros, "TVs devem mais de R\$50 milhões de direitos autorais," *O Estado de São Paulo*, July 27, 1998.
10. Jotabê Medeiros, "Lei do Direito Autoral leva o primeiro à cadeia," *O Estado de São Paulo*, March 4, 1999.
11. Fábio Takahashi, "Internet é opção contra cópia ilegal," *Folha de São Paulo*, May 30, 2005, <http://www1.folha.uol.com.br/fsp/cotidian/ff3005200521.htm>.
12. Felipe Lindoso, "Reprografia, direito autoral e licenciamento—para lembrar da história," *O Xis do Problema* (blog), 2012, <http://oxisdoproblema.com.br/?p=867>.

13. Lúcia Martins, "Cópia de Livros Didáticos Agora É Caso de Polícia," *O Estado de São Paulo*, November 11, 2002.
14. ABDR, Cartilha, <http://www.abdr.org.br/cartilha.pdf>.
15. Article 46, II, Law 9610/98.
16. Interview, José Castilho of Editora UNESP (press), April 8, 2015.
17. Marcelo Gutierrez and Simone Harnik, "Editoras Dão Descontos para Coibir Xerox," *Folha de São Paulo*, October 27, 2005.
18. Marcelo Godoy, "Deic Apura a Ação de Professores em Xerox," *O Estado de S. Paulo*, March 4, 2005.
19. Fábio Takahashi, "Universidade propõe sistema para evitar Xerox," *Folha de São Paulo*, May 1, 2005.
20. Gutierrez and Harnik, "Editoras Dão Descontos para Coibir Xerox."
21. Agnaldo Brito, "Livro sob encomenda vira arma contra fraude," *O Estado de São Paulo*, June 8, 2005.
22. Renata Cafardo, "Contra xerox de livros, cópias legais," *O Estado de São Paulo*, August 25, 2007.
23. Interview with Richardt Rocha Feller, Minha Biblioteca, February 13, 2015.
24. Fábio Takahashi, "PUC libera uso de Xerox de livros por alunos," *Folha de São Paulo*, September 9, 2005.
25. The U.S. copyright industry umbrella group, the IIPA, has always expressed serious concerns about the role of universities in encouraging "book piracy" in Brazil. The following selection from the 2005 submission is representative: "Unauthorized photocopying continues to undermine the legitimate book publishing markets. The publishing industry reports that unauthorized photocopying of entire textbooks as well as study materials, individual lessons and chapters from textbooks continues to be the major form of book piracy in Brazil. AAP [Association of American Publishers] estimates losses to its members of US\$18 million in 2004 and those losses multiply sharply for local Brazilian publishers. Many university texts used are apostilas, anthologies made up of chapters from various books copied illegally, both in English and in translation. Some professors make photocopied compilations of materials before the first day of classes, which gives the booksellers no chance to import or sell the books before classes. Some estimate that the annual number of unauthorized photocopies ranges from 3 to 5 billion pages. Universities are tacitly, and sometimes actively, condoning these practices, and are certainly taking no role at present in fighting these illegal activities in and around their campuses. The Ministry of Education has likewise failed to address this issue in any way, and the publishing industry really needs this ministry to step up and engage on this issue. Furthermore, illegal copying flourishes in commercial establishments adjacent to institutions of higher learning. Government action on illegal photocopying of academic materials, which cost[s] both domestic and foreign publishers millions

of dollars and cost[s] the Brazilian government thousands of jobs and millions in tax revenues, is practically nonexistent. IIPA asks the Ministry of Education and the administrative bodies of universities and colleges to work with the enforcement authorities to make sure that a clear message is sent to those engaged in illegal photocopying, both on and off campus, that this activity will not be tolerated. The recently reorganized Associação Brasileira de Direitos Reprográficos (ABDR) has been working with authorities to conduct enforcement actions and plan for future endeavors" (IIPA 2005, 56).

26. Fábio Takahashi, "Universitários Lançam Frente Pró-Xerox," *Folha de São Paulo*, February 22, 2006, www1.folha.uol.com.br/fsp/cotidian/ff2202200618.htm.

27. *Diário do Congresso Nacional*, October 24, 1973, 1555–1570.

28. Amendment 233. "Art. ... It is prohibited for the proprietors, operators and/or lessees of reprographic equipment—photographic, heliographic, photoelectric or photoelectronic—to produce copies of printed works, literary, artistic, didactical, technical, or scientific, in full or in part, in a single or multiple copies, with intent to profit, except under formal authorization of the rightsholder." In *Diário da Câmara dos Deputados*, November 8, 1973, 1817.

29. At the time, the ABDR claimed this change was only intended as a "defensive" measure to incentivize licensing, and even garnered support from the Xerox Corporation, which was worried about the association of its brand with piracy. See Felipe Lindoso, "Reprografia, direito autoral e licenciamento—para lembrar da história," *O Xis do Problema* (blog), 2012, <http://oxisdoproblema.com.br/?p=867>.

30. *Diário da Câmara dos Deputados*, December 6, 1997, 40420.

31. Other proposals dealt with the issue of university photocopies, both in favor and against the practice: Bill 1197/2007 (Dep. Bilac Pinto, PR-MG): Prohibits the presence of copy machines, or any other devices that allow the reproduction of literary works, in higher education institutions, archived; Bill 5046/2005 (Dep. Antonio Carlos Mendes Thame, PSDB-SP): Allows the reproduction of an entire work, in a single copy, for the exclusive, not-for-profit use of university students, archived; Bill 7458/2010 (Dep. Dr. Talmir, PV-SP): Allows the reproduction of an entire work, in a single copy, for the purposes of research, by graduate students, following a signed declaration of the student's supervisor, filed with the higher learning institution; Bill 131/2006 (Sen. Valdir Raupp, PMDB-RP): Allows the reproduction of 25 percent of work for private, not-for-profit use, archived, resubmitted as Bill 34/2015.

32. ECAD was in a fragile political position following an unfavorable final report from a Senate investigation and a decision by antitrust authority Administrative Council of Economic Defense (CADE, Conselho Administrativo de Defesa Econômica) that established that ECAD was acting as a cartel. On the former, see Cristina Tardáguila, "CPI do Ecad: Relatório Final Sugere 21 Indiciamentos e Propõe Nova Lei," *O Globo*, April 21, 2012, <http://oglobo.globo.com/cultura/cpi-do-ecad-relatorio-final-sugere-21-indiciamentos-propoe-nova-lei-4696319>. On the latter, see Célia Froufe, "Cade Condena Ecad por Cartel no Mercado Musical," *O Estado de São Paulo*, March 20, 2013, <http://www.estadao.com.br/noticias/geral,cade-condena-ecad-por-cartel-no-mercado-musical,1011141>.

33. It also took steps to ensure the transparency of collection and distribution of royalties (Francisco and Valente 2016; Wachowicz 2015). The constitutionality of Law 12853/13 was challenged at the Supreme Federal Court by collecting societies, but the law was declared to be constitutional in 2016.

34. Former Minister of Culture Juca Ferreira denounced the actions of his successors in very strong terms: “Sadly, the coup’s government perfectly destroyed [the Intellectual Rights Directorship] as quickly as it could. Marcelo Calero, the brief [note: Calero was only in office for a few months], first listened to a lobbyist from the Hollywood movie industry. Then he sat down with the directors of the associations who were defeated in the ADINs [note: the legal procedures that challenged Law 12853/13’s constitutionality]. Anxious to gain support to maintain himself in a position for which he was never adequate, he irresponsibly eliminated half of the Ministry of Culture’s Intellectual Rights Directorship, handing its control to names appointed by the aforementioned lobbyists. And, in an equally irresponsible manner, he stripped the competences attributed to the Ministry for the enforcement of Law 12.853/13 [...] The Intellectual Rights Directorship stopped monitoring the ECAD and its member associations.” See Ferreira 2017.

35. See http://www2.cultura.gov.br/consultadireitoautoral/wp-content/uploads/2010/06/Lei9610_Consolidada_Consulta_Publica.pdf.

36. ABRELIVROS, contribution to the copyright reform debate, 2010, <http://www2.cultura.gov.br/consultadireitoautoral/wp-content/uploads/2010/09/ABRELIVROS.pdf>.

37. SNEL, contribution to the copyright reform debate, 2010, <http://www2.cultura.gov.br/consultadireitoautoral/wp-content/uploads/2010/09/SNEL1.pdf>.

38. Leonardo Neto, “Livro Ganha Mais uma Entidade,” *Publishnews*, August 24, 2016, <http://www.publishnews.com.br/materias/2016/08/24/livro-ganha-mais-uma-entidade>.

39. Writing in 2004, Fisher proposed: “In brief, here’s how such a system would work. A creator who wished to collect revenue when his or her song or film was heard or watched would register it with the Copyright Office. With registration would come a unique filename, which would be used to track transmissions of digital copies of the work. The government would raise, through taxes, sufficient money to compensate registrants for making their works available to the public. Using techniques pioneered by American and European performing rights organizations and television rating services, a government agency would estimate the frequency with which each song and film was heard or watched by consumers. Each registrant would then periodically be paid by the agency a share of the tax revenues proportional to the relative popularity of his or her creation” (Fisher 2004, 202). The Brazilian discussion drew more closely on versions of this model formulated by Fred von Lohmann (2004) and Philippe Aigrain (2012).

40. Instrução Normativa n. 2, May 2016.

41. The summary of the document proposes: “1. Analysis and discussion of legal frameworks used to protect works in digital services; 2. Analysis and discussion of the role of companies and corporations that make use of protected works in the digital environment and their way of action, including the verification of the level of transparency on business and the proportions of copy-

right and related rights payment to the multiple rights holders; 3. Building consensus on the management of copyright in the digital environment, in order to deal with the problems associated to this matter, from the low payment of authors and artists to the limitations and exceptions to copyrights in the digital environment.” GRULAC, Proposal for Analysis of Copyright Related to the Digital Environment,” December 1, 2015. Document presented at WIPO SCCR, session 32, http://www.wipo.int/edocs/mdocs/copyright/en/sccr_31/sccr_31_4.pdf.

42. Brazil, nonetheless, reintroduced the topics of transparency, territoriality, and balance of rights in digital copyright as a discussion on electronic commerce at the WTO TRIPS Council in early 2017. See Jeremy Malcolm, “Brazil Proposes New Digital Copyright Rules for the WTO,” Electronic Frontier Foundation, <https://www.eff.org/deeplinks/2017/03/brazil-proposes-new-digital-copyright-rules-wto>.

43. Interview with Thiago Cândido on *Folha de São Paulo*. See Joselia Aguiar, “Livro Impresso, PDF, Legal Ou Ilegal? Livrosdehumanas.org Se Defende,” *Folha de São Paulo*, May 21, 2012, <http://livrosetc.blogfolha.uol.com.br/2012/05/21/livro-impresso-pdf-legal-ou-ilegal-livrosdehumanas-se-defende/>.

44. “ABDR promove caça a piratas digitais,” *O Estado de São Paulo*, July 12, 2010; Bruno Galo, “Falta de alternativa estimula a pirataria,” *O Estado de São Paulo*, November 2, 2009.

45. Mônica Bergamo, “Leitura pirata,” *Folha de São Paulo*, September 27, 2014.

46. Tatiana de Mello Dias, “O custo da cópia,” *O Estado de São Paulo*, June 18, 2012.

47. Publishers Forense and Contexto, both ABDR affiliates, protested the lawsuit. Raquel Cozer, “Difusão vs. Pirataria,” *Folha de São Paulo*, May 19, 2012, <http://www1.folha.uol.com.br/fsp/ilustrada/43655-difusao-vs-pirataria.shtml>.

48. A letter signed by seven professors and writers described the case in the following terms: “[...] The new virtual libraries are based in storage and dissemination like the material libraries of old, but they offer a decisive change because storage depends on distribution and not the opposite: it is the diffusion of files that guarantees their decentralized storage. It’s a non-profit library, built in this modern and democratic format, that is under threat by the lawsuit brought by the Brazilian Reprographic Rights Association (ABDR), under the pretext of copyright infringement. The high prices of books, and the growing costs for photocopies, led a university student to make available online to his colleagues texts that are out-of-print or difficult to access. The initiative grew, attracted the attention of students and professors from all over the country, and became the most well-known virtual library of academic texts, becoming as prestigious as the comparable ‘Derrida en castellano’ website, which was the target of a similar lawsuit and was cleared by Argentinian courts, as we expect ‘livrosdehumanas.org’ will be by the Brazilian Judiciary.” See “Em carta aberta, intelectuais apoiam blog Livros de Humanas,” *O Globo*, June 2, 2012, <http://blogs.oglobo.globo.com/prosa/post/em-carta-aberta-intelectuais-apoiam-blog-livros-de-humanas-448445.html>.

49. In a blog post, Coelho defended Livros de Humanas and Thiago Cândido, arguing that the publishing industry—like the music industry—must adapt to technological change, and that

book piracy does not harm industry profits. The author then asked his readers to send the ABDR copies of the post, or messages written by the readers themselves, with the observation that “trolling, in this case, is allowed.” See Coelho’s post at <http://paulocoelhoblog.com/2012/08/12/e-permitido-trollar/>.

50. See <https://twitter.com/neilhimsel/status/204657543312707587>.

51. Interview with Milena Piraccini Duchiate, Leonardo da Vinci Bookstore, March 25, 2015.

52. Miguel Conde, “Suspensão de Blog Com Livros Piratas Cria Discussão Na Web,” *O Globo*, April 29, 2011, <http://blogs.oglobo.globo.com/prosa/post/suspensao-de-blog-com-livros-piratas-cria-discussao-na-web-377257.html>.

53. Apelação nº0123514–64.2012.8.26.0100, TJ-SP. Decided on June 1, 2016.

54. See <https://thepiratebay.org/user/livroslivres/>.

55. Lê Livros has switched domain names a few times. As of February 2017, it can be found at <https://lelivros.pro/>.

56. See <https://lelivros.pro/sobre-nos/>.

57. After the site was taken offline, a torrent with 1,300 books was released. “Após Fechamento do site iOS Books, Piratas Liberam Lista Completa de 1300 Livros Pirateados,” *Tecnoarte News*, March 27, 2012, <http://www.tecnoarteneews.com/share/apos-fechamento-do-site-ios-books-piratas-liberam-lista-completa-de-1300-livros-pirateados/>.

58. “This cyberlocker site is well-known globally and is particularly popular in Brazil. While 4shared provides legitimate file-storage services, the site also facilitates the streaming and downloading of high volumes of allegedly pirated videos, music, books, and video games. 4shared mobile apps reportedly enable users to stream infringing content to mobile devices, while certain search and music player features may encourage music infringement. Right holders use 4shared’s notice-and-takedown mechanism frequently but with little apparent impact on the overall levels of infringing content stored on and accessed through the site. Looking for other ways to steer Internet traffic away from infringing files, right holders have requested more than fifty million removals of 4shared URLs from prominent search engine results since June 2011; more than any other domain. While major U.S. payment providers no longer service 4shared, site operators continue to collect revenue from premium accounts and advertising by using resellers and offshore payment processors. 4Shared is registered to an entity in the British Virgin Islands and hosted by a company in Cyprus” (USTR 2016, 7).

59. The first version of the public consultation text included a takedown system partially inspired by the DMCA, but used it to regulate *all* types of content removal requests, including those based on defamation. This provoked a strong reaction from the National Association of Newspapers (ANJ, Associação Nacional de Jornais), on the grounds that it could lead to censorship. The Ministry of Justice, which was in charge of the consultation, quickly backtracked and established the current system, based on judicial orders, that was eventually approved in the final text of the law, and which does not apply to copyright infringement. See Cruz (2015) and Flávio Ferreira, “Pro-

jeto Pode Ferir Liberdade na Internet, Dizem Entidades,” *Folha de São Paulo*, April 29, 2010, <http://www1.folha.uol.com.br/fsp/brasil/fc2904201015.htm>.

60. The latest draft of the bill, pre-impeachment, contained a novel notice-and-takedown regime that allowed for the forced remuneration of content that was not removed by users, to be requested directly from the platform or service provider. This version of the text was never published, but was leaked to civil society, industry, and academia, and is in file with the authors of the present chapter but not available online.

61. “Taking part in 4shared Partnership Program for copyright holders also presupposes your ability to search for content and mark it as yours, in case you own the copyright on the found files. Moreover, being a 4shared partner you can choose what you want to do with found files: block them or make money. At the same time, you can also opt for publishing the copyrighted materials yourself in the fast and convenient way.” 4shared, Partnership Program for Copyright Holders, <https://www.4shared.com/copyright-center.jsp>.

62. Kyle Orland, “Dropbox Knows When You’re Playing Pirate,” *Wired*, March 31, 2014, <http://www.wired.co.uk/article/dropbox-dmca-position>.

63. See <https://issuu.com/editora-saraiva>.

64. See <https://issuu.com/grupogen>.

65. See <http://www.snel.org.br/acordo-inedito-contra-pirataria-beneficia-associados-do-snel-2/>.

66. See <http://www.ebah.com.br/copyright>.

67. Interview with Beatriz Fazolo, *Passei Direto*, April 16, 2015.

68. São Paulo, 11ª Vara Cível—Foro Central Cível, processo n. 1044001–59.2014.8.26.0100.

69. See <https://www.passeidireto.com/blog/passei-direto/uma-nova-forma-de-ver-os-materiais-de-estudo-no-passei-direto/>.

70. See <http://www.minhabiblioteca.com.br/>.

71. See <https://pastadoprofessor.com/>.

72. See <http://www.bvirtual.com.br/sobre>

73. Roberta Campassi, “Regra do MEC Pode Estimular Demanda por E-Book nas Universidades,” *PublishNews*, May 7, 2012, <http://www.publishnews.com.br/materias/2012/05/07/68240-regra-do-mec-pode-estimular-demanda-por-ebook-nas-universidades>.

74. Interview with Mauro Koogan of *Grupo Gen*, October 12, 2014.

75. Brazilian Digital Library of Theses and Dissertations (BDTD, Biblioteca Digital Brasileira de Teses e Dissertações), <http://Bdtd.Ibict.Br/>.

76. Interview with Bianca Amaro of IBICT, December 19, 2014.

77. CAPES, Portaria 13, February 15, 2006 https://www.capes.gov.br/images/stories/download/legislacao/Portaria_013_2006.pdf. The Coordination for the Improvement of Higher Education Personnel (CAPES, Coordenação para o Aperfeiçoamento de Pessoal de Nível Superior) is further discussed in the section on the CAPES Journals Portal.

78. Portaria 329/2014, https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/portaria_-_politica_de_acesso_aberto_ao_conhecimento_na_fiocruz.pdf.

79. Bill 387/2011, Sen. Rodrigo Rollemberg, RJ.

80. SciELO began with support from the São Paulo Research Foundation (FAPESP, Fundação de Apoio a Pesquisa do Estado de São Paulo), the Brazilian National Council for Scientific and Technological Development (CNPq, Conselho Nacional de Desenvolvimento Científico e Tecnológico), and the Latin American and Caribbean Center on Health Sciences Information (BIREME, Centro Latino-Americano e do Caribe de Informação em Ciências da Saúde). Currently, most of the funds come from FAPESP.

81. Interview with Abel Packer, SciELO, April 9, 2015.

82. Ibid.

83. The project started with a group of three university presses (Editora UNESP, EdUFBA, and Editora FIOcruz) and has since expanded to ten.

84. Interview with Abel Packer, SciELO, April 9, 2015.

85. The city of São Paulo approved an executive decree in 2011 that established that educational materials produced by public municipal schools must be published under an open license; a bill proposing similar policy at the state level, however, was vetoed by the governor of São Paulo after being approved by the legislative. As of 2014, the state of Paraná and the Federal District were also debating OER legislation, and a federal bill establishing open licensing for primary and secondary education *and* universities was proposed in 2011. See Rossini and Castro 2016.

86. See <http://periodicos.capes.gov.br/>.

87. CAPES stands for Coordenação para o Aperfeiçoamento de Pessoal de Nível Superior—roughly, Coordination for the Improvement of Higher Education Personnel. CAPES is a foundation linked to the Ministry of Education and plays a variety of roles in Brazilian academic research, including evaluating graduate programs and promoting international scientific cooperation. From *História e Missão*, <http://www.capes.gov.br/historia-e-missao>.

88. The National Textbook Program (PNLD) was created in 1985, succeeding the PLIDEF (Programa do Livro Didático para o Ensino Fundamental), and previous attempts dating back to the National Institute of the Book (INL, Instituto Nacional do Livro), founded in 1937, and National Textbook Commission (CNLD, Comissão Nacional do Livro Didático), established in 1938. The PNLD provides free and universal distribution of textbooks for primary education students enrolled in public schools, and has been managed, since 1997, by the National Fund for the Development of Education (FNDE, Fundo Nacional de Desenvolvimento da Educação), a federal

agency linked to the Ministry of Education. The PNLD was later joined by two other programs, PNLEM and PNLD EJA, targeting secondary education and adult illiteracy, respectively (Cassiano 2013; Soares 2007). The Brazilian government, due to these programs, is one of the main book buyers in the Latin America, to the point where one of the main book market surveys available in Brazil, carried out by Institute of Economic Research Foundation (FIPE, Fundação Instituto de Pesquisas Econômicas) and SNEL, includes government purchases as a separate category in its reports.

89. Two attempts were undertaken during the Lula mandates, first via the Ministry of Education's Book Portal in 2004, and later via the Censo Bibliográfico da Graduação in 2006, a proposed database of titles used by federal university professors intended to provide a basis for book acquisition (Rosa 2007, 106–107). The very nature of higher education courses, which accommodate a much greater diversity in subjects and content, is not compatible with massive book-buying programs such as the PNLD, which demand a great degree of standardization of content in order to allow for gains in scale.

90. CAPES, "Relatório de Gestão," 2014, http://www.capes.gov.br/images/stories/download/Contas_Publicas/2014_Relatorio_de_Gestao_CAPES.pdf.

91. Interview with Sueli Mara Ferreira, University of São Paulo, November 26, 2014.

92. Interview with Bianca Amaro, IBICT, December 19, 2014.

93. Maurício Tuffani, "Capes Anuncia Projeto de Internacionalização de Revistas Científicas Brasileiras," *Folha de São Paulo*, October 31, 2014, www1.folha.uol.com.br/ciencia/2014/10/1541286-capes-anuncia-projeto-de-internacionalizacao-de-revistas-cientificas-brasileiras.shtml.

94. The sample was randomly drawn from institutions chosen from a list of existing schools offering courses in the aforementioned areas in 2014. As a criterion for selection, we randomly selected schools from two distinct categories: those that had more than 200 final-year (senior) students per year, and those that had fewer than 200. This process generated a pool of 2,340 responses, divided into six equal groups. Students in their first year of studies were not included in this survey, so a filter was used by applicants when approaching students on different campuses. The final questionnaire had more than fifty questions and was applied in person by a trained team, between November 2014 and April 2015. We also conducted a focus group in each disciplinary field with the participation of between five and eight students. The questions asked during the focus group reflect the survey questions, and quotes from the participating students are included to illustrate the data presented here. Data collection for the surveys and focus groups was undertaken by Cláudia de Fátima Pesquisas and Elizete Ignácio, under supervision of the authors. Sample design and the treatment of survey data was done with the assistance of Kaizô Iwakami Beltrão.

95. Interview, Alexandre Camargo of Estante Virtual, June 11, 2015.

96. We also asked a series of more directed questions to gauge the popularity of well-established legal sources. Here, Google Scholar and SciELO have received the most mentions, with the CAPES portal trailing well behind. This is likely due to the fact that CAPES portal databases are not made

available to all institutions, and that they mostly cover English-language content that is more useful at a graduate level.

97. The FIPE/SNEL surveys used by Earp and Kornis are based on self-reporting by publishers, which, according to a well-informed source interviewed by Earp and Kornis, tends to paint an overly optimistic picture of their businesses (Earp and Kornis 2005:29). As of 2015, Nielsen extended its BookScan measuring service to Brazil, relying on data provided by bookstores—mainly large retailers. The results for 2016 show a decline of 9.2 percent in sales for the year. See Leonardo Neto, “Faturamento de livrarias cai 9.2 percent em 2016,” *PublishNews*, January 16, 2017, <http://www.publishnews.com.br/materias/2017/01/16/faturamento-de-livrarias-cai-92-em-2016>.

98. Overall GDP grew 39.45 percent for the same period. Carlo Carrenho, “A Década Parada,” *PublishNews*, June 9, 2015, <http://www.publishnews.com.br/materias/2015/06/09/82226-a-decada-parada>.

99. According to *Retratos da Leitura*, the only major survey of reading habits carried out in Brazil, 44 percent of the population had not read a book from beginning to end in the previous three months (interviewed in 2015). See Instituto Pró-Livro, *Pesquisa Retratos da Leitura*, 2016, http://prolivro.org.br/home/images/2016/Pesquisa_Retratos_da_Leitura_no_Brasil_-_2015.pdf.

100. Student population data was taken from *Sinopses Estatísticas da Educação Superior—Graduação*, INEP, <http://inep.gov.br/web/guest/sinopses-estatisticas-da-educacao-superior>.

101. For an overview of the sector, see Schwartzman and Schwartzman 2002; Almeida 2014; Martins 2009; Sécca and Leal 2009; Severino 2008.

102. This growth was facilitated by government programs that expanded student loans to private institutions (FIES, starting in 1999) and scholarships (ProUni, starting in 2005). Cuts in both, as well as the economic and political crises that affected Brazil by 2016, make the future uncertain for much the private education sector. Public universities are also suffering; one of Brazil’s most prestigious public universities, the State University of Rio de Janeiro (Universidade Estadual do Rio de Janeiro, UERJ), founded in 1950, was at risk of shutting down in 2017 due to budgetary problems. See André Cabette Fábio, “Como a Uerj chegou à maior crise de sua história. E quem é afetado por isso,” *Nexo Jornal*, January 11, 2017. <https://www.nexojornal.com.br/expresso/2017/01/11/Como-a-Uerj-chegou-à-maior-crise-de-sua-história.-E-quem-é-afetado-por-isso>.

103. Dalton Morato, “Mesa 4. Usos educacionais de conteúdos protegidos,” *Anais do Seminário de Direitos Autorais e Acesso à Cultura*, August 2008, http://www.cultura.gov.br/documents/10883/38605/anais_sem_direitos_autorais_acesso_cultura_sao_paulo.pdf.

104. Interview with Mauro Koogan of Grupo GEN, December 10, 2014.

105. For a breakdown of the public investment that goes into the production of educational materials eventually sold by commercial publishers, see Craveiro, Machado, and Ortellado 2010.

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