

9 Coda: Uruguay

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We end with a familiar scene. On an October morning in 2013, students arrived at the University of the Republic in Montevideo to find a major police operation underway. In collaboration with Interpol, the organized crime unit had raided fifteen copy shops in the area surrounding the law school and detained thirty-two people (El País 2013a). The timing was provocative. The law school—the largest unit at the university with more than fourteen thousand enrolled students (Udelar 2013)—was in the middle of exams. News of the raid spread quickly. The arrests and confiscated photocopy machines were televised and the topic trended on social networks, where it met an avalanche of criticism.

In Uruguay, as in the other countries explored in this book, unauthorized photocopies are still the principal means of access to course materials (Rodés and Pérez Casas 2013)—generalized throughout the academic community and facilitated by faculty. Student centers at nearly all schools have photocopying services, with which they make compendia of materials and CD archives for student use. As materials gradually shift to digital formats, university learning management systems have become distribution and storage platforms, with little attention paid to licensing.¹

As in many other Latin American countries, all of these forms of access to materials—paper and digital—are illegal under Uruguayan copyright law and subject to punishments ranging from fines to jail terms.² Uruguayan law has no exceptions for copying in educational contexts. The law, in effect, makes criminals of most of the students and faculty.

A 2012 survey of students at the University of the Republic by Rodés and Pérez Casas revealed a wide array of material obstacles to education. More than 66 percent said that they used photocopies of portions of books; 58 percent acknowledged copying whole books. Fifty-seven percent of the students indicated that buying books represented a significant portion of their total budgets.³ Here, the library represented an important

source of access for 49 percent of students. Unauthorized downloading trailed slightly at 43 percent.

As elsewhere, students consistently indicated a preference for print over digital materials—including those who downloaded materials. Some 56 percent of the students in the latter group print the materials they download. Such numbers are reflective of the (still) low rate of adoption of e-readers and tablets (Rodés and Pérez Casas 2013).

Perhaps predictably, then, the academic community reacted strongly to the copy shop closures and arrests. Shortly after the raid, the Federation of University Students (FEUU) published a declaration calling for “free and democratic access” to the full corpus of human knowledge (Montevideo Portal 2013). A few days later, students held a demonstration in front of the law school to protest the closures (El Observador 2013). The Student Center at the law school, in turn, launched a petition to demand better access to course materials and reform of the copyright law, including the creation of educational exceptions and the decriminalization of nonprofit infringement. The campaign collected 10,000 signatures and resulted in the presentation of a draft reform bill to Danilo Astori, then vice president of Uruguay (El País 2013b).

Like in Argentina, where cheap-books pioneer Eudeba began to sue students in the 1990s, the raids marked the breakdown of an earlier generation of access strategies. The raids were initiated by a complaint from the Foundation of University Culture (or FCU), which was the main editor, distributor, and vendor of course materials at the Law School. The FCU, in turn, was the descendent of the Office of Course Materials, which was founded by law students at the University of the Republic in the 1940s to make educational materials more available and affordable. Officially, the FCU retains its original goals and even today has formal links to the Student Center. Over time, however, the FCU became a more conventional commercial publisher, offering discounts to students but no longer pushing seriously against the problem of affordability. As in Argentina, the academic publishers ceased to be the main advocates of cheap access. Increasingly, this problem was left to the students.

The FCU enjoys a privileged position at the Law School because the students are essentially a captive audience. In this context, and like most other commercial publishers, it produces small print runs at high prices, deliberately undershooting student enrollment. The cause of this distortion was widely debated in the months following the raids. The Uruguayan Book Association blamed widespread photocopying for the high-price, low-print-run model (180.com.uy 2013a). The students, in turn, blamed high prices for widespread photocopying (180.com.uy 2013b).⁴

Whatever the case, the discussions between the Book Association and the students strongly suggested that the legal market, in its current form, could not readily meet educational needs. A compromise position had been possible as long as there was no active repression of the informal market. When the police began raiding copy shops at the behest of the FCU, that equilibrium was disturbed.

Soon, the various parties to the dispute turned to the state for relief. The draft bill presented by the Student Center was one of these demands. For its part, the Book Association saw an opportunity to increase public purchasing for libraries and licensing of e-books (Espectador 2013). Still other parties to the debate proposed the reinstatement of a private collecting system that could compensate authors for photocopies. This strategy had been tried in the mid-2000s via a collecting society called A.U.T.O.R. Unfortunately, A.U.T.O.R. had difficulty developing a constituency among authors, in part because of lack of transparency regarding royalties. It ceased operations in 2007, without returning any revenues to authors.

In practice, each group tried to capitalize on the crisis. In March 2014, following an agreement with the FCU, the government printing office (the IMPO) launched a digital library focused on educational materials (El Observador 2014). The new service lowered the price of some materials, but also used digital rights management tools that monitored user behavior and prevented copying and printing. Inside the university, opinion split in two directions: one favoring closer relations with the presses and the other supporting open-access policies for scientific and educational materials. Advocates of the latter approach had their own strategy built around support for open access textbooks and an institutional repository for open access materials (called Colibrí, the Conocimiento Libre Repositorio Institucional).

The debate launched by the 2013 raids continues to play out across the university system, the publishing sector, and the state. The number of proposed solutions has grown, but—as we have seen elsewhere in this book—the shape of a durable, legal, and more inclusive approach remains unclear.

The student-led reform effort sought to expand educational exceptions to copyright enough to legalize most educational photocopying. Prospects for such reform dimmed in 2016, however, in the face of publisher opposition. The publishers succeeded in killing key provisions such as personal copy exceptions (which allow a limited number of copies for personal use) and the decriminalization of non-for-profit infringement. The watered-down bill that survived this process remains stalled.

State efforts (such as IMPO's digital library) focus on obtaining more favorable terms for digital licensing from publishers. The IMPO model promises lower prices than the paper equivalents but, as in other digital library efforts, depends on publisher support

for affordable licensing and easy access. How these concepts translate into actual pricing and terms of use, however, remains unsettled and history suggests that publishers will eventually charge whatever they believe the market can bear. The large multinational publishers, for their part, have their own online distribution channels and have resisted pressure to make side agreements with IMPO. Students, in turn, have generally balked at the restrictions on copying and printing imposed by the publishers (El País 2014). As we have seen in Uruguay and elsewhere, student preferences tilt sharply toward paper on the one hand, and free digital copies on the other.

The third source of pressure comes from the university sector, which is trying to expand the production of open textbooks and the use of open repositories for research. As we have seen, the main challenge is that these initiatives internalize costs that the university has always treated as externalized in the publisher and student communities. These efforts leave open the question of how the university will finance these projects over the long term and whether an open textbook ecosystem, in particular, can grow and effectively compete with the commercial sector without those financial assurances.

As elsewhere in this book, the main obstacle to change is the complexity and resilience of the status quo. For students, ad hoc combinations of buying, borrowing, and copying get most of them through most of their classes. For researchers, they provide access to most of the work they need most of the time. For publishers, informal copying erodes the commercial market but also reduces pressure for noncommercial solutions such as open models and more flexible copyright rules. For universities, the mixed ecosystem saves them from taking on new expenses, responsibilities, and forms of liability for their students. This is a moment of oddly balanced forces, with evolving commercial strategies, open models, and unauthorized copying all exerting forms of pressure and constraint. There is no reason to assume that this balance is stable but, as with most complex systems, the effects of any significant change are hard to predict. In practice, organizational conservatism and inaction tend to win out. In Montevideo, the political cost of a real crisis over access to materials was too high. The copy shop networks reopened soon after the raids and students returned to their usual patterns of activity. In Delhi, publishers and universities are fighting over whether the university will incorporate some portion of the copying that everyone knows will happen anyway. In either case, the growing abundance of research and instructional materials and the diversity of ways to copy and distribute them favor the students. It's up to everyone else to make their access easier and legal.

Notes

1. In the case of the University of the Republic, this “virtual learning environment” (Entornos Virtuales de Aprendizaje, or EVA) was introduced in 2008 and uses Moodle software.
2. Uruguayan copyright law (9.739) dates to 1937 and has been modified several times. The most important of these modifications came in 2003 with the passage of Law 17.616, which brought Uruguay into compliance with the TRIPS agreement. Although TRIPS says little about enforcement, the law responded to rights holder anxiety about the rise of CD and DVD piracy—adding restrictions and increasing penalties to a maximum of three years in prison for infringement with a commercial motive. The text of the law is available at: http://www.wipo.int/wipolex/es/text.jsp?file_id=196344 (accessed March 2, 2017).
3. The survey was taken by 771 students at the University of the Republic. The data is presented in Rodés et al. 2012 as part of a larger comparative inquiry into student practices and attitudes around books, digitization, and open access materials.
4. In the course of this debate, the then president of the Book Association, Alicia Guglielmo, sought to reframe the issue in economic terms, arguing that photocopying threatened 1,200 jobs in the editorial sector (180.com.uy 2013a). But this claim met with some skepticism. Photocopying had been ubiquitous in the university community for decades, with no clear evidence of growth or decline over the period. According to publishing representatives, the piracy of books in other sectors is low (DICREA 2009:37), suggesting a problem mostly limited to course materials.

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