

Digital Education, Scholarly Research and Open Limitations

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EDUCATIONAL CHALLENGE: GENERAL REFERENCE MATERIAL AND LOCAL REALITIES



- Building interests in subjects demands adaptation of general references to student's realities
=> New, locally oriented educational material must be constantly built upon preexisting ones;
- The dynamics of teaching practices stresses the need of broad freedom for
 - Using;
 - Adapting;
 - Creating; and
 - Sharing instructing material and experiences.
- Digital education:
 - Transnational;
 - Demands permissible international instruments (to foster the production and sharing of locally oriented educational experiences, practices and material);
- Enhanced educational oriented limitations allow for
 - continuation (of common, basic and regular existing teaching practices and material);
 - development of new and improved;
 - sharing



THE RESEARCH CHALLENGE: THE REFERENCE GAP



- Access to existing academic output is key to new knowledge;
- Access barriers [excessive pricing; out-of-print material; orphan works] = reference gap;
- Reference gaps lead to
 - Outdated knowledge;
 - Diminished intellectual opportunities;
 - Reduced critical mass;
 - Innovation disadvantage.
- Open access movements = increasing dissatisfaction of research institutions and academics with obstacles to scholarly communications.



OPEN, GENERAL AND FLEXIBLE LIMITATIONS



SUPERIOR COURT OF JUSTICE (STJ) PARADIGMATIC DECISION:
RESP (Special Appeal) n. 964.404/11
Official Summary of the decision (own translation)

- *“I – The Controversy resides on the possibility of charging musical public performance fees for the school year opening ceremony in a religious institution educational institution: religious event, not for profit and free admission;*
- *II – Need for systematic and teleological interpretation of article 46 of Law 9.610,1998 (copyright act) under the light of the established limitations in the law, ensuring the satisfaction of fundamental rights and constitutional principles in collision with author rights, such as intimacy, privacy, cultural, educational and religious rights;*
- *III – The effective scope of author rights are made clear only after consideration of its restrictions (exceptions) and limitations, considered as such the resulting from the examples stated in articles 46, 47 and 48 of the Copyright Act, interpreted and applied according to the fundamental rights;”*



FINAL THOUGHTS

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- Development gaps are strongly influenced by disparities in knowledge => result from lack of access to existing knowledge + restrictive educational possibilities;
 - Strong, solid copyright systems need social legitimacy = possible when public interest is well balanced with private interests;
 - When the public interest perceived as crushed by private interests => copyright as hindrance to the realization of the public good (education, improvement, advance) => aversion, not praise => perception broadly transmitted to the community;
 - Common and civil law have a history of open, general, flexible and adaptive legal norms in their systems. Both rely in statutes as well as court decisions to (i) extract the meaning and (ii) apply the norms to the particularities of a given case;
 - Social demands don't wait for the legislation. Courts will decide on present demands. Set lists of exceptions are routinely outdated when they come into force. Both systems are ready for an open, general and flexible set of copyright limitations. Openness is key to build an adaptive system and legal security.



Thank You!

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