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Professional ethics, copyright legislation, and the case for collective copyright disobedience in libraries

Australian library and information science (LIS) professionals face conflicting legal and ethical obligations in relation to copyright. As law-abiding citizens, they have a legal duty to adhere to the *Australian Copyright Act 1968*. However, as LIS professionals, they are expected to uphold the principles of intellectual freedom and access of information as outlined by the code of conducts of professional associations such as the Australian Library and Information Association (ALIA) and the American Library Association (ALA). This article explores the paradoxical relationship between copyright compliance and LIS's professional ethics. A comparison between the *Australian Copyright Act 1968* and core LIS values reveals that legislative guidelines contradict the aims and principles of the LIS profession. Consequently, a case can be made for collective copyright disobedience within the LIS profession. Collective acts of copyright disobedience such as online piracy and the Freedom of Access to Information and Resources (FAIR)'s *Cooking for Copyright* campaign have influenced major copyright reforms and the advent of new scholarly communication models. Based on these results, it can be argued that collective copyright disobedience by LIS professionals is not only justified, but necessary to fulfilling professional and ethical responsibilities.

Keywords: copyright; copyright reform; professional ethics; civil disobedience; library and information science; Australia

Introduction

Library and information science (LIS) professionals often face conflicting legal and ethical obligations in relation to copyright compliance and information dissemination. While LIS professionals are legally required to adhere to the tenets of the *Australian Copyright Act 1968*, the Copyright Act restricts the use of third party content, inhibiting librarianship's primary aim—the dissemination of knowledge, which can only be achieved through the

reproduction, communication, and distribution of information. Such irreconcilable obligations raise the question: If no one can serve two masters, which master *should* libraries and LIS professionals serve? The often vulnerable and underserved populations that make up their clientele? Or powerful legislative bodies? This article explores the paradoxical relationship between copyright compliance and LIS's professional ethics through the lenses of consequence-based, rights-based, duties-based, and virtues-based ethics, and poses the question of whether civil disobedience is necessary to instigate change.

A professional tension

As libraries are hubs of culture and learning, LIS professionals know that copyright has two sides—the need to take into account both the intellectual property rights of the creators to retain control over their creations, and the rights of patrons to access knowledge (Coates, 2018). This is acknowledged in the International Federation of Library Associations and Institutions (2017b) code of ethics, which states that although LIS professionals should ‘provide the best possible access for library users to information and ideas in any media or format’, they must also recognise that they are ‘partners of authors, publishers and other creators of copyright protected works’, thereby ensuring that both users’ and creators’ rights are respected.

LIS professionals and creators are part of a shared ecosystem, which facilitates access to knowledge and ideas. Article IV of the American Library Association's (2019) code of ethics states that LIS professionals ‘respect intellectual property rights and advocate balance between the interest of users and rights holders’. LIS professionals are great supporters of creators and want them to achieve as much financial success as possible (Coates, 2018). However, many LIS codes of ethics prioritise intellectual freedom and freedom of access to information (American Library Association, 2008) above all else, encouraging LIS

professionals to promote the free flow of information (Australian Library and Information Association, 2007) and ideas in the interest of all citizens and a thriving culture, economy and democracy (Australian Library and Information Association, 2014). Freedom of information is the second of ten foci of the Australian Library and Information Association's 2019 advocacy campaign 'Truth, Integrity and Knowledge' which argues that it is a 'basic human right to have freedom of access to information, ideas and works of imagination, without bias or censorship' (Ebsworth, 2019).

Such contradictory aims mean that LIS professionals lack clear guidelines for choosing the right course of action whenever a conflict arises between their legal and ethical obligations. While legal flexibilities—known as limitations and exceptions—provide balance between users and creators of protected works (International Federation of Library Associations and Institutions, 2017a), there are still instances where copyright law contradicts broader professional, ethical, and moral reactions (Lipinski, 2012). In these instances, compliance may conflict with other professional values such as access and equity (Mathiesen & Fallis, 2008). As Lipinski (2012) writes, the law places an excessive obligation upon others to act so that while securing a lawful result, their actions may have consequences that can be arguably undesirable. This creates tension between a LIS professional's obligation to protect the creative labour that has gone into producing a work and their desire to provide clients access to the work (McMenemy, Poulter, & Burton, 2007).

Australia's copyright conundrum

Australia's copyright law is considered radically out of date by many people in the LIS, academic, and creative communities (Lessig, 2008). According to Coates (2018) the defaults of international copyright law are set to maximum protection, with most systems considering acts of copying illegal, unless legalised through a legislative exception or with written

permission from the copyright owner. This protection applies to fundamental activities and operations of galleries, libraries, archives and museums (GLAM) within Australia, and includes preservation of cultural material and supplying material to clients (Coates, 2018). Prior to 2019, the *Australian Copyright Act 1968* granted unpublished works perpetual copyright. This meant works of cultural and historical significance could not be digitalised without permission from the heirs of the original creator, who could be difficult and sometimes impossible to identify and locate. Similarly, libraries were only permitted to make copies of a work for the purpose of preservation *after* the original had been lost, stolen, or damaged. These restrictions emphasise how Australian copyright law was in conflict with the missions of the GLAM sector in providing access to and preserving cultural material—missions generally mandated by statute (Kenyon & Wright, 2010).

Despite the recent introduction of new copyright exceptions under the *Copyright Amendment Disability Access and Other Measures Act 2017*, which includes more flexible provisions for preservation, examinations, and copyright duration, there are still many contractual limitations that jeopardise the delivery of quality education and information services. For example, it is currently illegal for LIS professionals within academic libraries to reproduce digital content from subscription databases for enrolled students who have little or no internet access. Such restrictions have the potential to widen Australia's digital divide, which already sees people from rural, indigenous, and low socio-economic communities at a disadvantage (Australian Digital Inclusion Index, 2018). This failure to provide access to information to marginalised groups not only undermines the LIS profession's aim to 'resist all efforts to censor library resources' (American Library Association, 2008), but the Universal Declaration of Human Rights' mandate that 'education shall be accessible to all' (United Nations, 1948). This highlights the reality that libraries sometimes provide inequitable and inconsistent information access due to the complex relationship between

copyright legislation and subscription license agreements. Although subscription licensing helps LIS professionals remain compliant, especially when a license covers a broad range of copying types, such as institutional and personal classroom, reserve and research copies, and administrative copies, the variant terms and conditions between subscription agreements can create inconsistent access to information for clients, depending on the agreement signed between the library and vendor. This can often result in the denial of scholarly content to clients whose situation may not be included under a typical subscription agreement—for example, an incarcerated student who, although enrolled in a university course, does not have access to the internet, and therefore cannot access their institution's subscription databases. Not only does the inconsistent relationship between copyright law and contractual licences perpetuate inequality in the delivery of information services, but it also creates frustration and confusion for library clients who struggle to understand why they're excluded from these services. Consequently, the combination of laws and legislations, rampant licensing of information and new technological controls make it increasingly difficult for libraries to serve their clients (Neal, 2013). According to the American Library Association's (2019) code of ethics, LIS professionals should be prepared to explain restrictions on client use of content, and that 'licensed e-content, including e-books, databases and video streaming services, may have limitations on use beyond those present in copyright law'. Often subscription contracts grant the copyright holder rights that far outstrip those of copyright law. This can be difficult and sometimes paradoxical to justify to library clients.

Additionally, LIS professionals and educators are unable to implement best practices in online course design, such as Universal Design for Learning principles (Rose & Meyer, 2001), despite Australia's endorsement of the Marrakesh Treaty, which permits the transfer of accessible materials across borders (World Intellectual Property Organization, 2013). This is because Australia's copyright law currently prohibits the creation of transcripts from

copyrighted audiovisual works, unless requested by a specific student with a disability. The *Copyright Amendment Disability Access and Other Measures Act 2017* introduced a new definition of ‘person with a disability’ to include persons with a disability that causes difficulty reading, viewing, hearing or comprehending copyright material (Parliament of Australia, 2017). However, Australian copyright law fails to recognise that inclusive practices, such as Universal Design, do not solely benefit people with disabilities, but individuals of a diverse range of abilities and learning styles, including people who speak English as a second language. Although LIS professionals often promote accessibility and inclusivity in their work, the rigidity of Australia’s copyright law often prevents them from creating inclusive environments at a holistic and practical level. This means that copyright compliance in libraries sometimes comes at the expense of the equity LIS professional’s strive to uphold.

A 2017 study, in which 29 Australian creators were interviewed to determine how they integrated existing content into their work, found that copyright also creates a barrier to creativity. Most of those interviewed did not consider obtaining permissions to be a simple process, describing it as ‘incredibly stressful’, ‘terrifying’, and ‘a total legal nightmare’ (Pappalardo & Bansal, 2018). In fact, a recent survey found that 63 per cent of Australian creators had to change a project because of copyright issues, and that many creators had dream projects they never started because copyright management seemed too difficult (Aufderheide, Pappalardo, Suzor & Stevens, 2018). The research also highlights the real and unsurprising costs associated with creativity under Australia’s current copyright regime, which include money, time, inferior outputs (as perceived by the creator) and abandoned or never fully conceived work due to the difficulties associated with copyright (Aufderheide et al. 2018). The stifling of Australia’s creativity, imagination and cultural heritage is instructive for the national discussion of copyright exceptions and limitations. In 2016, the Australian

Government's Productivity Commission review into intellectual property arrangements concluded that Australia's copyright legislation is 'skewed too far in favour of copyright owners to the detriment of consumers and intermediate users' (Australian Government Productivity Commission, 2016). This includes sections that are lengthier, more detailed and less permissive than other countries, who have equivalent provisions in their legislation (Bond, Paramaguru, & Greenleaf, 2007). The technological protections measures (TPMs) and digital rights management (DRMs) provisions outlined in the Digital Millennium Copyright Act (DMCA) have only served to strengthen the rights of copyright owners by potentially criminalising legal information use (Donabedian & Carey, 2011). The DMCA's ban on circumvention disallows conduct that is legal under copyright law, including actions that rely on fair dealing in Australia and fair use in America, ultimately hindering 'freedom of access to information' (American Library Association, 2008). According to the Productivity Commission (2016), Australians break copyright law on average 80 times a day, simply because it does not meet the needs of the digital age.

LIS professionals' ethical dilemma

LIS professionals need to be copyright literate in order to manage copyright and its associated risks in the most effective way, whilst still meeting clients' expectations and respecting creators' rights. Copyright literacy involves understanding the structure, functions, and implications of copyright law, practices, and client expectations to make well-informed decisions on how to use copyrighted material (International Federation of Library Associations and Institutions, 2018). LIS professionals are often seen as copyright experts, and are reference points for those around them. However, the impracticalities of Australia's copyright exceptions and limitations poses a significant challenge for Australian LIS professionals. As McMenemy, Poulter & Burton (2007) explain, the legal obligation of LIS

professionals extends beyond merely protecting the rights of creators, to protecting the libraries from liability should the publisher or copyright owner discover a breach for which the library could be held responsible. However, by protecting the interests of libraries and governing institutions over the needs of library clients, LIS professionals are discounting the core values of their profession, such as challenging censorship in the fulfilment of our responsibility to provide information and enlightenment (American Library Association, 1996), encouraging intellectual freedom and the free flow of information (Australian Library and Information Association, 2007) and assuring free and open access to recorded knowledge, information and creative works (Weissinger, 2003). Although neutrality has long been regarded as an important ethic of the LIS profession (Williams, 2017), a growing number of LIS professionals have begun to question whether it is preferable, or even possible, to be neutral, especially in relation to the conflict that occurs between copyright compliance and access to knowledge (Williams, 2017; Morrison, 2017). So what, then, should LIS professionals do when the law conflicts with their professional ethics? Four broad and widely-recognised ethical lenses that LIS professionals could consider when trying to alleviate this tension are the ethics of consequences, rights, duty, and virtue.

Consequence-based ethics

In consequence-based ethics, the righteousness of a decision depends on its consequences.

The most often discussed of these theories is utilitarianism, which posits that the right decision or action is one that maximises overall happiness (Mill 1863; Fallis, 2007).

However, applying utilitarian thinking to copyright is problematic, since while copyright infringers might gain happiness from reading or watching pirated works, this reduces copyright owners' happiness by threatening their livelihood. Although it can be argued that

the traditional royalty system is a zero-sum game with no clear winners or losers, since any benefit a creator receives from a single sale is negligible (Hawthorn, 2012), rule utilitarianism cares more about societal happiness than that of any one individual.

According to Hettinger (1989), respecting and upholding copyright has the greatest propensity for societal happiness since it ensures creators are able to recover the costs of producing the intellectual property and are therefore more likely to supply libraries with further works. If creators are unable to rely on copyright protection and rewards for their creative efforts, this could have a negative impact on Australia's creative industries (Cantatore, 2013). Unfortunately, the societal benefits of copyright are purely cultural, with most of the revenue generated by copyright retained by publishers and copyright agencies. In 2017, the Copyright Agency—the only body authorised to collect copyright fees on behalf of Australian creators—came under the scrutiny of a Productivity Commission review for retaining \$15 million worth of funds owed to creators who could not be traced (Martin, 2017). Rather than return these funds to publicly-funded educational institutions, which would have created the most overall happiness, the Copyright Agency elected to channel them into combatting proposed copyright reforms (Martin, 2017).

Using this framework, LIS professionals must ask themselves: Which is more beneficial to clients and Australians in general? The current 'permission culture', which requires clients to obtain written permission or purchase a licence from the copyright owner before they can reproduce parts of a work, or a more flexible 'remix culture', which allows people to use and build upon existing works? (Hawthorn, 2012). While both positions are valid, it could be argued that since creators are also consumers whose works are often inspired by the works of others, a remix culture that encourages free distribution and expression of ideas would provide the greatest societal benefit.

Rights-based ethics

At the other end of the scale are rights-based ethics, which work on the premise that each individual possesses certain universal human rights. For some, this includes the right to the fruits of our labours (Moore, 2001), while others believe everyone has the right to unrestricted access to information (Woodward, 1990). In fact, Fallis (2007) goes on to suggest that when information is withheld from people, individuals lose the ability to think for themselves, and therefore restricting information goes not only against human rights, but human nature. Consequently, it can be argued that rights-based ethics rejects the notion of copyright since it deprives human beings of access to valuable information. For example, a recent study by Himmelstein, Romero, McLaughlin, Tzovaras and Greene (2017) found that paywalls prevent clients from accessing three quarters of scholarly literature made available on the web, despite the fact that that research is often publicly or philanthropically funded. Although it is expected that everyone has the right to accessible education (United Nations, 1948), copyright measures and licensing agreements create technological and financial barriers that deny people's natural right to unrestricted access to information, impeding their ability to make informed decisions. Therefore, under rights-based ethics, the most ethical action for LIS professionals to take when faced with copyright restrictions would be the one that protects our clients' natural right to education and unrestricted access to information.

Duty-based ethics

Duty-based ethical theorists—or deontologists—believe people should follow societal rules rather than personal desires, no matter the consequences. According to duty-based ethics, whenever the law states we must act or not act in a certain way, then we must follow through

(Aulisio, 2013). This is noted in Immanuel Kant's (1780) theory of ethics, which states that to act in the morally right way, people must act from duty. Since the law prohibits anyone, even LIS professionals, from using and distributing other people's intellectual property without a licence or the copyright owner's permission, from a deontological perspective, copyright infringement is always an immoral action, regardless of the intentions behind it. This is reinforced in the International Federation of Library Associations and Institution's (2016) *Code of Ethics for Librarians and Other Information Workers*, which states LIS professionals must comply with the law as it stands, and facilitate access to information, within the limits of the law.

However, this is complicated by the fact that the codes of conduct laid out by LIS professional associations offer another set of dual rules which cannot always be reconciled with societal law. Mitchell (2013) suggests that whenever such conflicts arise, putting the best interest of society ahead of self-interest means it is almost inevitable that some members of the profession will be forced to consider not complying with a law or policy, when complying would violate the profession's code of ethics and lead to an arguably greater injustice than the non-compliance.

As Fallis (2007) writes, the duties of justice and beneficence are vital to the LIS profession. LIS professionals have a duty to provide access to information and to distribute knowledge justly by rejecting the denial and restriction of information (International Federation of Library Associations and Institutions, 2017b). LIS professionals also have a duty to encourage intellectual freedom and the free flow of information and ideas (Australian Library and Information Association, 2007). If LIS professionals abide by copyright law, then they fulfil their duty as lawful citizens, but at the same time, they are violating their profession's codes of ethics and neglecting their duties of justice and beneficence. Therefore,

LIS professionals must ask themselves: By stringently adhering to copyright law, are we justly and beneficently serving our clients, and fulfilling our duty as LIS professionals?

Virtues-based ethics

Virtue ethics focus on a person's moral character—or moral excellence—rather than actions or consequences. Characteristics deemed virtuous include courage, temperance, friendliness, and generosity (Fallis, 2007). Aristotle believed virtue to be culturally defined, community-oriented, and directed toward the perfection of character (Stallman, 1996). For him, proper virtue meant feeling the right way, about the right things, towards the right people, at the right times, for the right end (Aristotle, 2009). Based on Aristotle's criteria, it could be argued that challenging copyright law for the purpose of providing socially and financially disadvantaged clients with access to information and education is virtuous.

This is pertinent in opposing the neutrality that is often expected of LIS professionals (Williams, 2017), especially when attempting to balance the rights of both creators and users. Neutrality does not encourage critical thinking by allowing LIS professionals to question facts, laws, actions, or behaviours that are wrong or prejudiced (Williams, 2017). By this measure, neutrality does not reveal injustice but further entrenches it, ultimately disregarding the foundations of virtue ethics. Under virtue ethics, equity is not a neutral position.

According to Lankes (2018), if LIS professionals do not address inequities within our communities, we are not neutral – we are harmful and instruments of oppression. Complying with copyright restrictions undermines the generosity at the heart of LIS values. Hall (2016) believes we must have the courage to attempt new economic, legal and political systems and models for the production, publication, sharing and discussion of knowledge and ideas if we are to achieve moral excellence as LIS professionals.

Civil disobedience through online piracy

Although knowingly possessing or distributing an infringing copy of copyrighted content is a criminal offence in Australia (IP Australia, 2016), it can be argued that piracy is so prevalent in our society that attempting to label it as ‘deviancy’ does not sound reasonable (Larsson, Svensson, Mezei & de Kaminski, 2014). As Litman (2001) writes, the more people a law tries to constrain, the more futile it can be to enforce. People do not obey laws they do not believe in. So if a law is bad enough, large numbers of people will fail to comply with it, and governments find it difficult to enforce laws that only a handful of people obey. Lobato (2008) suggests there are six conceptual models of piracy: piracy as theft, which denotes criminality; piracy as free enterprise; piracy as free speech; piracy as authorship; piracy as resistance; and piracy as access. Although each model is relevant, ‘piracy as access’ inspires copyright disobedience due to its ‘capacity to disseminate knowledge culture and capital’ (Lobato, 2008, p. 29).

Piracy as means of access is often motivated by accessibility and economic factors. According to Kern and Pfeiffer (as cited in Yu, 2012), when the cost of legally obtaining content is higher than people can afford, the economic strain will lead them to consider digital piracy. This is common in the academic community, where the cost of textbooks has risen over 1000 per cent since 1977 (Popken, 2015). These financial implications impede students’ livelihood and their natural right to education. This was evident in Universities Australia’s Student Finances Survey 2017, which surveyed more than 18,500 Australian university students about their cost of living and day-to-day financial reality (Universities Australia, 2018). The survey found that one in seven university students regularly go without food and other necessities because they cannot afford them (Universities Australia, 2018). This rises to one in four for students of Aboriginal and Torres Strait Islander heritage

(Universities Australia, 2018). As a result, the research found that students' perceptions of piracy often acknowledge the illegal nature of the practice, but a belief that, despite such illegality, piracy was justified (Czerniewicz, 2017). In fact, students often displayed pragmatism and ethical considerations in regards to piracy and education, with some students questioning whether it is unethical to want to be educated, or unethical to charge so much for a textbook (Czerniewicz, 2017). Students even applied a consequence-based lens to their decision-making and considered education central to their lives and the future of their communities, leading them argue that educational pursuits justified online piracy (Czerniewicz, 2017).

Accessibility is another motive for online piracy, especially since access to new and notable research is often restricted by paywalls. Prohibitive subscription costs have led many researchers to commit acts of civil disobedience like participating in peer-to-peer sharing on platforms such as Twitter, Reddit, and Facebook, and downloading content from pirate websites like Sci-Hub, ResearchGate, and LibGen, which bypass paywalls by using leaked authentication credentials to retrieve articles from institutional databases (Himmelstein et al., 2017). The popularity of such sites cannot be overstated. Over the past few years, Sci-Hub has received over 28 million download requests, while LibGen contains over 25 million documents, with approximately 2,270 new articles added every day (Cabanac, 2016; Gardner & Gardner, 2015; Himmelstein et al., 2017).

While the law regards it as a criminal offence, Litman (2003) states that piracy is not stealing in the same sense as taking physical objects, but rather invading one or more of the copyright owner's rights. A piracy study in the United States found that of over 500 people studied, over half of the participants who had high digital piracy propensity did not have high theft propensity, and that while stealing typically correlated with low morality, online piracy did not (Yu, 2010). There is also research that suggests even when scholars have access to

journals via their institution library's paid subscriptions, they prefer to share papers regardless of the legality (Gardner & Gardner, 2017). Gardner and Gardner (2017) found that the key factors contributing to researchers' decision to utilise pirated websites are speed, accessibility, and user experience, with many researchers opting for shared papers over lengthy interlibrary loan processes.

Ideology is another factor: many users believe scholarly information should be free (Gardner & Gardner, 2017). Those who choose to upload their own works to pirated websites do so in the name of reciprocity, community, solidarity, and civil disobedience (Gardner & Gardner, 2017). They believe they could not have completed their own research without the support of sharing communities and crowdsourcing sites and consider it natural to want to give back to others (Gardner & Gardner, 2017). They also view their acts of copyright disobedience as a logical response to the ruthless monopolisation of academic publishers and the current copyright regime (Gardner & Gardner, 2017). Hall (2016) states that through these actions, scholars have adopted the persona of a pirate: someone who traditionally operates in a manner that is neither simply legal nor illegal. A pirate's attitude and philosophy has the potential to transform the way people can access and use copyrighted material, by drastically shaking up the current copyright system. This is demonstrated by the success of the European Pirate Party political movement, whose mission to protect freedom of information rights and digital access have been adopted by parliamentary policy makers, courts, and mainstream political parties (Jaasaari & Hilden, 2015).

The works of pirates have influenced and normalised community expectations that research and information should be accessible on open digital platforms. Sci-Hub, a prominent pirated platform founded by Alexandra Elbakyan in 2011 is one of many illicit websites that have influenced and challenged community views on the economic and social factors that affect access to scholarship. Elbakyan (2016) states 'the effect of long-term

operation of Sci-Hub will be that publishers change their publishing models to support open access, because closed access will make no sense anymore'. Himmelstein, Romero, McLaughlin, Tzovaras and Greene (2018) argue that Sci-Hub may be one contributor to dwindling subscriptions, ultimately allowing LIS professionals to effectively advocate for open alternatives in light of the changing landscape. This trend is evident by library consortia threatening wholesale cancellations of specific publishers, with 300 academic institutions in Germany and Sweden, as well as the University of California terminating its subscription with Elsevier in a push for open access to publicly funded research (McKenzie, 2019; Kwon, 2018). In essence, scholarly publishers may have already begun to lose the battle—a battle where piracy has encouraged scholars and LIS professionals to advocate for more sustainable and legitimate open access publishing models. Currently, university libraries across the globe are facing a common paradox, where academics conduct research, write papers, peer-review papers by others, and serve on editorial boards all for free, then are forced to buy back the result of their labour at outrageous prices (Sample, 2012). Open access journal publishing, through either green or gold access models, is a plausible solution, but will need the continued concerted effort of LIS professionals at a global level to achieve transformational change. Plan S aims to achieve this by lobbying for policy change around publicly-funded research outputs, requiring that by 2020, scientific publications that result from publicly-funded grants must be published in compliant Open Access Journals or Open Access Platforms (Science Europe, 2019). The Council of Australian University Librarians (CAUL) and the Australian Open Access Strategy Group (AOASG) support Plan S, and believe that international development in open access will drive greater adoption in Australia (Council of Australian University Librarians, 2019).

Today, around 50 per cent of newly published articles are available without paywalls (Himmelstein et al., 2017). This is due in part to the fact that many scholars are no longer

targeting journals that do not allow them to self-archive their articles in institutional open access repositories (Hall, 2016). Additionally, the increase of green open access availability continues to rise as funders mandate postprints (Van Noorden, 2014) and preprints allow researchers to bypass the lengthy timeframe involved in scholarly publishing (Powell, 2016). For LIS professionals, the open access and Creative Commons movements are welcomed alternatives to issues of information access and equity. However, Kim (2007) argues that while Creative Commons has raised public awareness about how copyright is related to creativity and freedom, it may not entirely solve the professional conflict. Corbett (2011) also argues that Creative Commons' flaws include an over-simplification of copyright concepts such as the public domain, moral rights, fair use, and fair dealing, and the lack of precision in definitions of terms such as 'commercial' and non-commercial'.

LIS professionals' efforts in advocating for and enabling both gold and green open access routes continues to slowly gain traction after 20 years of work and advocacy (Green, 2017). According to the literature, if past performance is anything to go by, four-fifths of new scholarly articles will be unavailable for most people via legal channels (Green, 2017). In addition, there are just over 8,000 titles hosted within the Directory of Open Access Books, which, considering that Springer alone offers almost 280,000 online titles, suggests that the number of books published open access has not even reached 2 per cent (Green, 2017). Green (2017) argues that green and gold open access routes are not revolutionary business models because if they were 'they would have >80% market share already and the pirates would be looking elsewhere for opportunities.'

The evidence shows a slow speed of change in the open access space, which is a contrast to the potent advancement of 'shadow libraries' such as Sci-Hub and LibGen (Karaganis, 2018), who are addressing issues of access and inequity to knowledge through

illicit but rather effective means. This is highlighted by the advanced usage statistics of the LibGen catalogue, which contained 836,479 records in 2012, doubled to 1,317,424 records in 2015, and by 2018, hosted more than 2,237,940 documents, with a particular focus on the western scholarly canon (Bodo, 2019). According to Himmelstein et al. (2018) online piracy is forcing publishers to quickly adapt to open access publishing models in order to remain relevant and progressive within academia, and is inspiring libraries like Harvard Library to cancel costly subscription agreements in a push for open access publishing (Sample, 2012).

Despite its illegality, some would argue that online piracy committed as civil disobedience is ethical, with Hall (2016) considering it a moral philosophy through and through, due to the fact that its convictions about freedom, rights, duties, and obligations have contributed to the development of new laws, new economies, new kinds of universities and new publishing models. It can be argued that Elabkyan's act of piracy had consequence-based and rights-based ethical intentions, by contending that everyone should have equal access to information. Virtue ethics also comes into play, as challenging the status quo requires courage and collegiality, all of which have been deemed virtuous by ancient philosophers such as Aristotle.

Online piracy, although deemed illegal, has had significant benefits at a societal and international level. It has liberated millions of scholarly works by forcing publishers to switch to open access publishing models. If researchers and LIS professionals continue to challenge traditional copyright, the transition to gratis availability of scholarly papers through open access could put an end to piracy once and for all. If scholars like Elbakyan had not disrupted scholarly publishing through copyright disobedience, the open access movement would likely not have gained steam. Consequently, copyright disobedience plays a key role in changing the way we interact with copyrighted material, by putting publicly-funded research back where it belongs: into the hands of the public.

Copyright disobedience through criminal cooking

In 2015, LIS professionals all over Australia united in a collective act of copyright disobedience known as *Cooking for Copyright*. In defiance of the Copyright Act, which at the time allowed unpublished works to retain perpetual copyright, thirty-five handwritten recipes were posted to the *Freedom of Access to Information and Resources* (FAIR)'s website. Australians were encouraged to cook one of these recipes—or choose one of their own—and post a photo on social media along with the hashtag #CookingForCopyright. Within a fortnight, it was trending #1 in Australia on Twitter, with more than 1,500 tweets and 9.9 million Twitter impressions (Australia Library and Information Association, 2015). News of the campaign reached an estimated audience of over 22 million people through television and radio, attracting international media coverage (Australian Library and Information Association, 2015). Neal (2011a) suggests that the test of successful collaboration is whether it produces something new, saves resources, or achieves more than what one LIS professional could working alone. By this criteria, *Cooking for Copyright* was a successful collaboration between LIS professionals in Australia as by working together as a profession, rather than independently advocating for copyright reforms, they were able to instigate real change.

The publicity generated by the *Cooking for Copyright* campaign contributed to the Australian parliament passing of the *Copyright Amendment (Disability Access and Other Measures) Bill 2017* on June 15, 2017. This new bill sought to rectify some of the impracticalities of the *Australian Copyright Act 1968* by ending perpetual copyright on unpublished and orphan works, allowing fair dealing for people with disabilities and anyone acting on their behalf, simplifying statutory licences for educational institutions, allowing the inclusion of copyright material in online examinations, and permitting libraries, archives and key cultural institutions to copy material for the purpose of preservation. The success of the

Cooking for Copyright campaign legitimises future acts of collective civil disobedience due to its success in influencing legislative change in Australian law. It can be argued that collective copyright disobedience by LIS professionals is not only justified, but necessary to fulfilling professional and ethical responsibilities, in order to affect change at this level. The International Federation of Library Associations and Institution's *Code of Ethics for Librarians and Other Information Workers* (2016) can be interpreted along these lines as it states that LIS professionals should advocate for stronger exceptions and limitations in order to maximise access to information. The success of collective acts of disobedience, such as piracy, have also been observed internationally. For example, in 2012, Google and an estimated 7,000 other smaller websites coordinated a service blackout in protest against the Stop Online Piracy Act (Waugh, 2010). This led to U.S Senators withdrawing their support for anti-piracy bills (Waugh, 2010). While this action was led by a commercial internet provider, this action provides further evidence that governments react and respond to collaborative, large scale acts of civil disobedience.

According to Lankes (2013), 'to be a librarian is not to be neutral, or passive, or waiting for a question. It is to be a radical positive change agent within your community'. The LIS professionals who initiated, participated in, and supported the *Cooking for Copyright Campaign* recognised that by complying with laws that do not align with today's digital world, they were violating their professional codes of ethics, which leads to injustice for clients (Mitchell, 2013). These LIS professionals can be said to have applied virtue-based, duty-based, and consequence-based ethical theories to their practice by campaigning for a copyright reform that would allow fairer access to information.

Adhering to copyright law is also being challenged by the advent of 3D printing and artificial intelligence. According to Rimmer (2016), copyright exceptions for libraries and cultural institutions have proven to be ill adapted for an age of 3D printing and makerspaces.

In today's 'hacker' and remix culture, library clients are seen as creators, rather than passive consumers of information (Rimmer, 2016). As such, clients are capable of making almost anything with 3D printing technology, which consequently poses further copyright challenges for LIS professionals, who are still expected to uphold the rights of copyright holders.

LIS professionals can use the power of collective copyright disobedience by making the case for a sensible and public-friendly copyright law that fosters innovation, rather than stifles it. Going forward, LIS professionals should turn their attention to advocating for fair use—an open approach adopted in the United States that allows flexible use of copyright works. Fair use allows clients to use copyright material without the permission of the copyright owner, as long as the use is 'fair'. Fair use recognises that people have legitimate reasons for using copyright material and that there cannot be exceptions that cover all of these uses (Fair Copyright, 2017). Without a broad, flexible exception like fair use, Australia's copyright law assumes that every new use is illegal until the Australian parliament introduces a specific exception to legalise it—which is exactly what is happening with the emergence of technologies like 3D printing (Fair Copyright, 2017). This means Australia's copyright law is constantly playing catch-up and is stifling the economic and creative growth of the Australian community (Australian Government Productivity Commission, 2016). The Australian Law Reform Commission's (2014) inquiry into the current exceptions of Australia's Copyright Act queried whether the exceptions were adequate and appropriate for the digital era. Multiple submissions within the inquiry supported the shift from fair dealing to fair use to optimise creativity, innovation, and economic development (Australian Law Reform Commission, 2014). Currently, Australia's copyright legislation is putting Australian businesses and individuals at a disadvantage compared to those in the United States, or other countries that have a fair use exception. Furthermore, fair use has been credited as a positive and integral part of the creative process

in the United States, with the Australian Law Reform Commission (2014) arguing that fair use restores balance between copyright holders and users of copyright works. As such, adopting a fair use approach to copyright in Australia will minimise the ethical dilemma LIS professionals currently face in wanting to support both the creator and consumer of a copyrighted work. Neal (2011b) states that fair use is not civil disobedience. However, LIS professionals might have to employ collective acts of copyright disobedience—similar to that of the *Cooking for Copyright* campaign—to advocate for fair use within Australia.

Conclusion

Australia's copyright law is critical to the work of libraries as it enables activities such as access, copying, and preservation. However, restrictive limitations and exceptions within the *Australian Copyright Act 1968* mean LIS professionals have to balance their responsibility to respect and protect intellectual property rights with their conflicting duty of ensuring freedom of access to information. Such contradictory aims mean that LIS professionals lack clear guidelines for choosing the right course of action whenever a conflict arises between their legal and ethical obligations. Applying ethical lenses to this dilemma demonstrates that LIS professionals' actions in prioritising fair and equitable access to information and knowledge over copyright compliance are validated by the virtues-based ethics of equity and courage that encourage the notion of copyright disobedience. Further research could explore how LIS professionals deal with the ethical conflict between copyright compliance and their professional ethics in their day-to-day work.

Collective and collaborative acts of civil disobedience have inspired positive and transformational change in Australian copyright law. Online piracy, although deemed illegal and immoral, challenges community expectations regarding access to information, ultimately inspiring greater advocacy for more equitable access to scholarship. However, Australian

copyright laws remain misaligned with community norms and expectations, particularly with regard to online works and publically-funded research. Corbett (2011) suggests that Creative Commons, open access, and online piracy sites, such as Sci-Hub, are quasi-alternatives which do not adequately address the problems posed by copyright laws that were drafted to suit earlier technology and are ill-suited to contemporary creativity and technologies.

The inconsistencies and inequities discussed in this article show that there is still more work to be done if Australia is to have copyright laws that balance creators' rights with societal norms, technological advances, and Australian's expectation of fair and equal access to education, information, and culture. In light of these issues, collective copyright disobedience by LIS professionals is not only justified, but necessary not only for upholding the professional and ethical responsibilities outlined in LIS codes of conduct, but in order to inspire positive change for the communities that LIS professionals serve.

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