

## Sueli Gandolfi Dallari

Dear readers,

We have just received the news that the *Revista de Direito Sanitário*/Journal of Health Law has been incorporated into *Scopus*, which serves as a great base for bibliometric evaluation of scientific journals. We are very happy with this recognition by our peers of the quality of our publication. However, we must discuss in this editorial the limits of the researcher's independence within scientific communication and, consequently, the moral justification for the intellectual property rights of publishers of scientific journals.

Let's start from the beginning. As was noted at the end of the 20<sup>th</sup> century, with the birth of the *Revista de Direito Sanitário*/Journal of Health Law, scientific publications originated in the earliest 17<sup>th</sup> century among scientific societies that wanted to publicize their works, both to discuss their findings among researchers and to influence science-related policy decisions. It is imperative to note that such centers of study were not created with structures that were dedicated to editorial services - which were becoming increasingly specialized as the "market" for scientific publications boomed, particularly after World War II. So, there was an emergence of commercial entities to provide editorial work for the research centers.

In the first decade of the 21<sup>st</sup> century, the growth of the market generated a powerful oligopoly that led European and American scientists, in turn, to demand open access (OA) for papers published in journals edited by such private groups. In the United States, the White House Office of Science and Technology Policy (OSTP) in February 2013 published the policy of sharing results of publicly funded research<sup>1</sup>, determining that articles thus funded should be made freely available online 12 months after their publication. In the European Union, open access was a key discussion at the meeting of ministers of research, innovation, industry and trade in May 2016<sup>2</sup>. The conclusions, which were released to the press, and, as related to our interests, were summarized in the following way: "Member states agreed to common goals on open science [...]. Delegations committed to open access to scientific publications as the default option by 2020 and to the best possible re-use of research data as a way to accelerate the transition towards an open science system. Open science involves moving from a system in which it is difficult to access and locate the results of scientific research to one that openly disseminates

---

<sup>1</sup>MEMORANDUM for the heads of executive departments and agencies, Febr. 22, 2013. Disponível em: <[https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp\\_public\\_access\\_memo\\_2013.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf)>.

<sup>2</sup>COUNCIL OF THE EUROPEAN UNION. Brussels, 27 May 2016. Disponível em: <<http://data.consilium.europa.eu/doc/document/ST-9526-2016-INIT/en/pdf>>.

results to all kinds of users, such as researchers, knowledge institutions, companies, patient organisations, teachers, students, farmers and citizens in general. It aims to transform science through ICT tools, networks and media, to make research more open, global, collaborative, creative and closer to society”<sup>3</sup>.

In fact, contemporary scientific publishing is a market dominated by private companies, where there is no competition for price since each publication is irreplaceable. This market, which is increasingly concentrated, connects publications and services. Thus, often the authors (or their employers/financiers) pay the expenses of publishing in the journals and neither authors, editorial committees, nor peer reviewers are paid by the publishers. In addition, the publishers require that the copyright be ceded to them, preventing even the author from publishing the article on his web page. Another flaw is the double, sometimes triple, payment made to publishers in the case of publicly funded research: a society pays research costs, publication fees, and journal subscriptions. As a matter of fact, subscriptions are also a major factor in this imbalance, since the major publishers (editing the most prestigious journals) impose a price increase on multiannual contracts that can hardly be explained editing costs, which are increasingly globalized, with subcontracting of companies from less developed countries that work much more cheaply.

Finally, we arrive at *Scopus*...

Soon after the explosion in the number of scientific papers published since the themed-20<sup>th</sup> century, bibliometrics, a tool to measure the prestige of scientific publications, began to be organized. The greater a journal’s “impact factor” (relation between the number of papers and the number of their citations) the more it will attract a researcher’s interest in publishing articles, since he or she will be positively evaluated by having papers published in journals of great impact. The traditional organizer of such bibliometrics is the Institute for Scientific Information (ISI), owned by Thomson Reuters (one of the world’s six leading scientific publishers with publicly traded shares), which since 2004 has suffered competition from *Scopus*, which is owned by Elsevier-Sciences (the among publishers, with an annual growth rate of 2% per year).

In short, this well-balanced circuit, which has made possible such dynamism in the scientific publishing of research, also involves the ability of major publishers to build a collection based on the activity of publishing information from research centers, which allowed them to increase their catalogs very quickly<sup>4</sup>. And the logic

---

<sup>3</sup>Council of the European Union OUTCOME OF THE COUNCIL MEETING 3470th Council meeting Competitiveness (Internal Market, Industry, Research and Space) Brussels, 26 and 27 May 2016. Disponível em: <file:///C:/Users/D%C3%A9bora%20Martins/Downloads/st09357.en16%20(1).pdf>. Acesso em: 31 jan. 2017.

<sup>4</sup>CNRS - Direction de l'Information Scientifique et Technique. L'Édition de sciences à l'heure numérique: dynamiques en cours (2015). p. 9-13. Disponível em: <http://www.cnrs.fr/dist/z-outils/documents/Distinfo2/DISTetude%20(2).pdf >. Acesso em: 31 jan. 2017.

of evaluation based on bibliometric indicators reinforces the attractiveness of the great publishers<sup>5</sup>. Still, one detail should be remembered here: the quest for open access, both nationally and internationally, should not frighten the major publishers, due to their focus on large platforms (Scopus, Elsevier, Link, Springer, Web of Science, Thomson) for which the question of access does not arise. These platforms bring together vast scientific fields, including diverse kinds of media (conferences and images) and not just journals; they have mechanisms to leverage the contents contained in it through search tools and Text and Data Mining (TDM); and they offer programs to support researchers' productivity, including programs to aid in the writing of scientific articles. Also they are "paying" programs, and not open, and therefore incompatible with the logic of "open processes".

Just to illustrate, it should be recalled that France reacted formally to the above framework by enacting Law 2016-1321, on October 7, 2016, ensuring open access to scientific publications that resulted from public research, through researchers' rights to disclose their papers after an embargo of 6 to 12 months, regardless of the contract signed with journal editors and making re-utilization of the research data free of cost (article 30, included in the Research Code [created by *Ordonnance* 2004-545 of 11 June 2004] article L533-4, subsections I to IV). But, this does not solve the issue of open "science", that is, both "open access" and "open process".

To this end, the French scientists have come to the conclusion that it will be necessary to construct identification catalogs of researchers and research centers; to produce open ontologies; to redefine intellectual property rights applicable to research; to develop TDM tools through collaboration; and to develop search tools that enable the exploration of all scientific information banks in the public sphere. Above all, the researchers concluded that overcoming of "all these challenges requires a strengthening of the international cooperation of public bodies confronted with the same trends and with the same priorities"<sup>6</sup>.

This is, in a brief summary, the panorama that is at the nexus of the limits of the researcher's independence in relation to scientific publishing and the moral justification for intellectual property rights of scientific journal publishing houses. It should be highlighted that the *Revista de Direito Sanitário*/Journal of Health Law will continue to be edited by Cepedisa and NAP-DISA/USP, with the support of the University of São Paulo itself, which does not imply that a necessary debate on these subjects can be ignored.

I am sure that this issue of our journal addresses important issues in contemporary health law, discussing the issue of standardization of sanitary quality of

---

<sup>5</sup>The four great private publishers control 25% of the 28,000 scientific publications worldwide, but 50% of them that are considered to have a great impact factor. (CNRS - Direction de l'Information Scientifique et Technique. op. cit., p. 14.)

<sup>6</sup>Id. Ibid., p. 8.

food, particularly in regards to information and advertising, as well as some issues raised in courts here in Brazil and abroad, always recalling the themes, actors and processes in the global sphere. We believe, dear readers, that open science, as we have seen, will only be created when researchers, companies, patient organizations, teachers, students, agriculturalists and citizens in general can participate in the process. We therefore urge you to submit your papers, reviews or comments on scientific works, or to offer your suggestions for topics of discussion and names of possible debaters. Please do contribute!

Sueli Gandolfi Dallari

Scientific Editor