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## **Direitos de autor e gestão do conhecimento no setor público Brasileiro**

### **Copyrighted works and knowledge management in the Brazilian public sector**

### **Derechos de autor y gestión del conocimiento en el sector público Brasileño**

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**Resumo:** O artigo problematiza algumas das relações entre o conhecimento detido pelas organizações públicas e as obras intelectuais produzidas por seus servidores. Seu objetivo é discutir o papel do conhecimento como um ativo intangível estratégico das instituições públicas, a importância da sua aplicação na permanente busca pela melhoria do seu desempenho, bem como a conveniência da inserção da propriedade intelectual em políticas de gestão do conhecimento. Entre as distintas possibilidades de abordagem que a temática oferece, concentramo-nos no tratamento conferido pela Administração Pública a obras intelectuais protegidas por direitos de autor, examinando alguns dos problemas mais comuns identificados em práticas institucionais. Com base em uma análise combinada da bibliografia especializada, legislação e jurisprudência, conclui-se que as lacunas, incertezas e inconformidades legais percebidas na atuação das instituições públicas brasileiras devem ser devidamente enfrentadas, considerando-se os valores simbólico e econômico que os ativos de propriedade intelectual representam para as organizações modernas, a plena observância dos princípios da Administração Pública e a salvaguarda de direitos garantidos aos cidadãos pela Constituição Federal. Por último, delineamos alguns princípios que podem nortear a inserção dos direitos de autor em políticas de gestão do conhecimento construídas no âmbito do setor público.

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**Palavras-chave:** Direitos de autor; Administração Pública; criações intelectuais.

**Abstract:** This paper discusses some of the relationships between the knowledge held by organizations and the intellectual works produced by public servants. We propose to analyse the role of knowledge as a strategic intangible asset of public institutions, the importance of its adequate application in the search for improvement of their performance and fulfillment of their functions, as well as the convenience of including intellectual property in knowledge management policies. Among the different possibilities of approach, we focus on the treatment given by the Public Administration to copyrighted intellectual works, analyzing some of the most common problems identified in institutional practices. Based on a combined analysis of specialized bibliography, legislation and case law, we conclude that the gaps, uncertainties and legal nonconformities identified in the performance of Brazilian public institutions must be duly addressed, considering the symbolic and economic values that intellectual property assets represent for modern organizations, the full observance of the principles of Public Administration and the safeguarding of rights guaranteed to citizens by the Federal Constitution. Finally, we outline some principles that can guide the inclusion of intellectual property rights in knowledge management policies developed within the public sector.

**Keywords:** Copyright; Public Administration; Intellectual Creations.

**Resumen:** El artículo problematiza algunas de las relaciones entre el conocimiento que poseen las organizaciones públicas y las obras intelectuales producidas por sus empleados. Su objetivo es discutir el papel del conocimiento como activo intangible estratégico de las instituciones públicas, la importancia de su aplicación en la búsqueda permanente por la mejora de su desempeño, así como la conveniencia de insertar la propiedad intelectual en las políticas de gestión del conocimiento. Entre las diferentes posibilidades de aproximación que ofrece el tema, nos centramos en el tratamiento que la Administración Pública da a las obras intelectuales protegidas por el derecho de autor, examinando algunos de los problemas más comunes identificados en las prácticas institucionales. Con base en un análisis combinado de bibliografía especializada, legislación y jurisprudencia, se concluye que las lagunas, incertidumbres y no conformidades legales identificadas en la actuación de las instituciones públicas brasileñas deben ser debidamente atendidas, considerando los valores simbólicos y económicos que los activos de propiedad intelectual representan para las organizaciones modernas, la plena observancia de los principios de la Administración Pública y la salvaguarda de los derechos garantizados a los ciudadanos por la Constitución Federal. Por último, esbozamos algunos principios que pueden orientar la inclusión de los derechos de autor en las políticas de gestión del conocimiento desarrolladas en el sector público.

**Palabras clave:** Derechos de autor; Administración Pública; creaciones intelectuales.

## 1. Introduction

In the way capitalist economies are organized, structured, and function today, knowledge constitutes a fundamental factor in generating wealth and differentiating agents

operating in competitive markets. Defined as a dynamic process that—based on the combination of factors implicit to the human intellect and codified in accessible media—generates systems of justified personal beliefs (Nonaka and Takeuchi, 2008), knowledge is now considered a strategic asset of modern organizations, a factor that guides the generation and ordering of information flows that underpin their activities, fostering the development and exploitation of capabilities applied to achieving their objectives. In other words, knowledge consists of "a fluid blend of condensed experience, values, contextual information, and experienced insight, which provides a framework for evaluating and incorporating new experiences and information" (Davenport; Prusak, 1998, p. 4).

It is precisely in this context that the concept of knowledge management is consolidated and valued within modern organizations. Nonaka and Takeuchi (1995) define it as a process by which corporations seek new ways to create and expand knowledge, disseminate it among their employees, and incorporate it into products, services, and systems. In summary, they state that knowledge management is a process of identifying, capturing, analyzing, managing, and sharing experiences and knowledge within an organization, facilitating problem-solving, supporting decision-making, and enabling the continuous improvement of administrative procedures, techniques, and production systems, as well as the goods or services they generate. It is, therefore, about creating an environment conducive to learning, innovation, professional development, the dynamization of organizational culture, and the continuous generation of new knowledge (Winkler; Mandl, 2007). And also the creation of mechanisms that allow the maintenance of this knowledge within the organization, even when the people who make it up, the real holders of this shared knowledge, leave its ranks for a variety of reasons.

The relevance achieved by knowledge management is not limited to the competitive environment of private companies. The public sector is also challenged to adopt a management model suited to the new demands imposed by society. Improving the performance of public organizations cannot dispense with expanding their potential for generating, sharing, and retaining knowledge. This entire set of processes, when aligned with the strategies, objectives, and actions of institutions, contributes to their achieving better results and generating value for society. Just as in the private sector, the knowledge held by public organizations can be expressed in different ways: through work methodologies, institutional values and symbols, technical memory, collective experiences, and, most importantly, through the products and services they develop. And a characteristic of part of

this institutional production is its authorial nature, an issue that, because it inspires legal and ethical concerns, particularly attracts our attention in the reflection we seek to promote.

This research aims to relate the factors mentioned above: a) the knowledge held by Brazilian public administration bodies; b) the need for efficient management of this intangible asset; c) the materialization of this knowledge in works and content protected by copyright. The central issue addressed in this study lies in the Brazilian public administration's treatment of content that is part of the list of copyrighted materials, seeking to identify the most evident problems encountered in institutional practices, related, on the one hand, to the status of public servants as authors of intellectual works and, on the other, to the observance of the rights of third parties—actors external to the institutional environment—who create content used by public entities in the products and services they offer to society. The aim, therefore, is to draw attention to important issues to be considered in the process of developing knowledge management policies within the public sector, considering intellectual property as one of the elements that must necessarily be considered. Finally, it aims to identify some of the principles that can serve as a basis for developing such policies.

## **2. Reference**

The proposed discussion is based on three basic conceptual categories: knowledge (applied to production), knowledge management, and intellectual property. Following Nonaka and Takeuchi's (2008) definition, knowledge is conceived in this article as a dynamic process that, based on the combination of factors implicit to the human intellect and codified in accessible media, engenders systems of justified personal beliefs. In other words, within modern organizations, the knowledge they hold is understood as "a fluid blend of condensed experience, values, contextual information, and experienced insight, which provides a framework for the evaluation and incorporation of new experiences and information" (Davenport; Prusak, 1998, p. 4). The term knowledge management is applied here in the terms of Nonaka and Takeuchi (1995), typified as a means by which corporations seek new ways to create and expand knowledge, disseminate it among their employees, and incorporate it into products, services, and systems. In summary, it encompasses a process of identifying, capturing, analyzing, managing, and sharing experiences and knowledge within an organization, serving to resolve operational problems, support decision-making, and continuously improve administrative procedures, techniques, and production systems, as well as the goods and services they generate. As Winkler and Mandl (2007) point out, knowledge

management seeks to create an environment conducive to learning, innovation, professional development, the dynamization of organizational culture, and the continuous generation of new knowledge. It also seeks to create mechanisms that allow this knowledge to be maintained within the organization, even when the people who comprise it, the true holders of this shared knowledge, leave for a variety of reasons.

The third fundamental reference we will draw on here is the concept of intellectual property, applied to the set of rights enjoyed by creators of specific types of intellectual works. Among the branches of intellectual property existing in the Brazilian legal system, our focus will be on the statute of copyright, whose protection applies to works belonging to the domain of literature, arts, or sciences, provided they are original, expressed and externalized in some medium, and remain registered for the legal term of protection (Bittar, 2019). These works include textual content, paintings, sculptures, drawings, choreography, music, photographs, speeches, maps, audiovisual works, among other related works. It is worth noting that the range of protection provided by law is not limited to the forms described therein, and may extend to various types of intellectual works, provided they identify with fields covered by the law (artistic, scientific, or literary) and comply with its requirements (Barbosa, 2010).

The starting point for our reflection lies in the observation that public organizations apply accumulated institutional knowledge on a daily basis to the development of their functions and activities, which includes the production of goods and provision of services that are copyrighted and must therefore be managed in accordance with the legal and ethical principles underlying these matters. This article, therefore, proposes an approach that, based on the interweaving of the aforementioned conceptual categories, allows for the problematization of the treatment afforded to copyrighted works within the public sector, particularly considering aspects related to the use of and access to these intellectual creations.

### **3. Methodology**

This work can be defined as empirical-critical research in its epistemological focus, exploratory in its objectives, and qualitative in its approach. As for the qualitative technique chosen, we opted to conduct a combined analysis of specialized bibliography, legislation, and existing case law on the topic, comparing the information gathered in the selected documentary corpus with practices observed in Brazilian Public Administration.

## 4. Results and Discussions

### 4.1. On the relationship between knowledge management and intellectual property

Knowledge management emerges as a field or discipline that promotes an integrated approach to the identification, evaluation, assimilation, sharing, and dissemination of an organization's knowledge, thereby stimulating the creation of new knowledge (Dalkir, 2005). This knowledge and skills, in turn, are applied to the organization's products, services, processes, methodologies, and other activities, thereby creating value. Knowledge management can serve a variety of purposes within the corporate environment, including the creation of tools used to understand, organize, and exchange ideas and values—often complex and interdependent—that permeate the relationships between the organization's employees, as well as their relationships with external partners, collaborators, and customers.

In the business world, knowledge management contributes to building sustained competitive advantages, reflected in the superiority of an organization's products or services over its competitors, the reduction of its production and transaction costs, gains in productivity and scale, and increased technological and innovation capacity, among other factors. This topic has certainly been extensively explored in specialized literature—particularly in the fields of economics and administrative sciences—which is why we consider it unnecessary to comment further. Focusing on what is most directly relevant to our reflection, we focus our attention on the contributions that knowledge management can offer within public institutions, which, by their nature and functions, are subject to dynamics and routines very different from those observed in the private sector. According to Schlesinger et al. (2008), in the 21st century, the patterns of organization for the production and distribution of goods and services, as well as consumer demands, become increasingly complex, imposing the need for organizations to rapidly adapt to this new scenario. This reality extends to the public sector, which is also under pressure to meet society's increasingly diverse and broad demands. In Brazil's case, the recent consolidation of the democratic experience—albeit with various setbacks and limitations—has led to an expansion of opportunities for exercising citizenship, increasing the population's awareness of the rights granted to them by the Federal Constitution and the State's duties toward them. This imposes on the Public Administration the obligation to offer agile and efficient responses to new demands, as well as to be accountable for the social and economic results of the public policies it implements. And, for this to be possible, it must necessarily be committed to the continuous improvement of its

working methods, the improvement of the quality of its services, and the adoption of good management practices.

Still focusing on the Brazilian reality, it can be stated that over the last couple of decades, the public sector has been concerned with discussing and implementing knowledge management practices in its institutions, recognizing the role of knowledge as a strategic corporate asset. It is generally understood that the pursuit of constant improvement in the performance of public organizations requires good management of the knowledge, skills, and capabilities of their employees, leveraging institutional knowledge. Numerous obstacles and constraints to the implementation of knowledge management in public agencies have certainly been identified, considering the unique characteristics of their systems. Authors such as Coelho (2004) and Kammani (2009) point out that several factors act as obstacles, such as the lack of incentives for knowledge sharing; low employee engagement in the topic; resistance to changes in work routines; the resilience of knowledge retention practices; the scarcity of spaces or support for interaction and knowledge sharing; the usual managerial rigidity; and the fragility of incentive and reward systems for improving functional performance. On the other hand, addressing these obstacles seems possible, given the experiences already observed, when certain conditions are created, generally based on careful study, planning, awareness-raising, and implementation of specific actions. To achieve this, the involvement and support of senior management are essential, creating incentives for the mobilization of all components of the institution.

Knowledge management in the public sector, in short, aims to improve institutional performance, making their activities more efficient, cost-effective, and of higher quality, thereby providing society with better and more diverse goods and services (Batista, 2012). Using a set of methods, techniques, and instruments, it aims to achieve specific objectives, such as promoting information sharing within the organization; facilitating access to information; fostering interaction between employees and departments; maximizing the use of institutional knowledge and capabilities; promoting innovation; stimulating learning; among several other purposes (Silva, 2018).

As previously mentioned, the knowledge held by a public organization can manifest itself through its working methodologies, institutional values and symbols, technical memory, collective experiences, and countless other forms, including the goods they produce or the services they provide to society. And sometimes, depending on the functions performed by public entities and the legal system of each country, this institutional production may constitute material protected by intellectual property rights. The intellectual capital of any



organization, including those in the public sector, can generate objects subject to appropriation, such as inventions, trademarks, industrial designs, computer programs, cultivars, artistic, scientific, and literary works, or others included in an extensive list of legal protections. These objects also possess symbolic and economic value, which can be exploited by institutions to fulfill their missions. Therefore, and this is the point we wish to emphasize, such objects constitute important intangible assets of any modern organization—including public ones—and must be properly managed. Among the various purposes to which knowledge management can be provided, therefore, is the rationalization and enhancement of the uses of all resources generated by knowledge held by a company, which includes intellectual property assets.

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Intellectual property rights are basically divided into two fields: the first encompasses the protection of the creator of artistic, literary, and scientific works, embodied in the copyright statute; the second, in turn, involves the protection of intangible assets applied to industrial production or commerce, embodied in the industrial property statute. For the purposes of this study, our entire focus falls on the first of these fields. Finally, it is worth noting that intellectual property rights also encompass *sui generis* protection regimes for certain types of intellectual creations, such as cultivars (new varieties of plant species), the topography of integrated circuits, and traditional knowledge.



Copyright protects intellectual works belonging to the field of literature, arts, or sciences, which express originality and can be expressed by any means, as long as they are not subject to legal restrictions (Barbosa, 2013; Bittar, 2019; Santos, 2020). In the case of Brazil, the right of ownership of authors over their works is guaranteed by Article 5, items XXVII and XXVIII, of the Federal Constitution (Brazil, 2016) and regulated by Law No. 9,610 of February 19, 1998 (Brazil, 1998). Both national legislation and international treaties to which Brazil is a party establish a list of protected works, which, as already mentioned, is not exhaustive. This set includes textual productions, paintings, sculptures, drawings, choreography, music, photographs, lectures and speeches, maps, audiovisual works, databases, and others. Copyright allows the owner of a protected work exclusive exploitation of it, granting them the right to prevent third parties from using it without their authorization. It basically covers two types of rights: patrimonial rights—which allow the owner to exclusively extract economic benefits from the exploitation of their creation—and moral rights, which allow the author to adopt measures to preserve the personal connection between them and the work.

For the purposes of this study, it is worth noting that, unlike in other countries, Brazilian legislation is silent regarding the treatment of copyrighted works produced within the public administration, lacking specific mention of authors' rights or possible exceptions involving the use of legally protected works. This is undoubtedly an aspect that motivates our reflection, as this legislative gap creates constant difficulties, particularly for organizations where certain copyrighted content is commonly produced or used in daily activities. This fact reinforces the need for public entities to develop standards and references for their employees' actions, ensuring the correctness and legal compliance of acts and decisions related to the use of these objects. We understand that the inclusion of intellectual property in institutional policies aimed at knowledge management can be a fruitful path to achieving this goal.

#### 4.2. Knowledge management and copyright in the Brazilian public sector

Knowledge management is a relatively recent topic in Brazil. At the dawn of the third millennium, the first studies focused on its application to public administration emerged, in a context marked by initiatives to reform the bureaucratic structure of the Brazilian state. Pioneering research, such as that conducted by Coelho (2004), Batista et al. (2005), Fresneda and Gonçalves (2007), and Schlesinger et al. (2008), contributed to the subject's notoriety, presenting the first reflections on the functions and purposes of knowledge management in the public sector, as well as on the obstacles to its introduction. In the wake of this work, models

for its implementation were developed, since, given the evident differences between public and private institutions, the operational standards generally applicable to the business environment were often incompatible with the unique characteristics of public administration. Examples of such proposals can be found in Batista (2012) and De Angelis (2013).

Based on a survey conducted on the CAPES Journals Portal, Alfenas et al. (2021) mapped research produced in Brazil between 2008 and 2017 on the topic of knowledge management in the public sector. According to the authors, within the chronological period investigated, they identified 23 papers published in specialized scientific journals, a low number, reinforcing the impression of the incipience of this research area in the country. In this bibliographical set, the authors found a predominance of exploratory (regarding objectives) and qualitative (regarding approach) studies, as well as a concentration of perspectives on the Federal Public Administration sphere, with few works addressing the experiences of state and municipal institutions. Among the topics most frequently discussed, the following stand out: how knowledge management manifests itself in public organizations; knowledge provision and sharing; learning mechanisms and processes; knowledge management practices and the advantages of their implementation; barriers and challenges to implementing these practices; applicability of knowledge management concepts and tools in public agencies; organizational members' perceptions of knowledge sharing and innovation; and comparative analysis of knowledge management practices in public agencies. After examining this literature, the authors conclude that the studies point to a predominance of intuitive and customized methods for implementing knowledge management in Brazilian public institutions, with little support from preexisting theoretical models. They also note a persistent interest among researchers in "understanding the cultural factors specific to the national public corporate environment that may hinder or foster local KM [knowledge management] initiatives" (Alfenas et al 2021, p. 473).

We note that the aforementioned research did not identify any investigations into the relationships between knowledge management and intellectual property assets. In our own survey, we found a single study on the topic, proposed by Carvalho and Veras (2008). In this article, based on the case study of a public company, the Federal Data Processing Service (SERPRO), the authors discuss the process of developing a policy and regulations applied to the treatment of intellectual property within the organization, evaluating their adequacy within the national legal system. They highlight the role played by intellectual property management in institutions that produce information assets, whether private or public, as well as the desirability of its inclusion in broader knowledge management policies. In the case of

SERPRO, an organization whose assets are fundamentally intellectual in nature, these intangible assets assume a crucial role in the performance of its activities, which contributed to raising awareness among institutional stakeholders regarding the issue. The action strategy adopted then prioritized the formalization of principles and practices that guide access, use, and ownership of "intellectual production involving knowledge resources" (Carvalho; Veras, 2008, p. 64). The authors point out that SERPRO's intellectual property policy was developed to promote the achievement of a series of institutional objectives, including reducing costs associated with litigation involving knowledge, trade secrets, information security, technology transfer, copyright, trademarks, and patents. Furthermore, its adoption also aimed to create an organizational environment "favorable to the company's productivity, reliability, and credibility with stakeholders (customers, suppliers, employees, and society)" (Carvalho; Veras, 2008, p. 64), in addition to enhancing the company's image and confirming its commitment to legal compliance in its operations.

Regarding the findings made by Carvalho and Veras (2008) regarding the difficulties encountered in the SERPRO experience involving the production and use of goods protected by intellectual property rights, we understand that these difficulties can be extended to the overwhelming majority of Brazilian public institutions. Focusing on aspects strictly related to copyright, we propose to reflect on some of the most obvious obstacles to which public servants involved in the creation of intellectual works are subject, seeking to identify how the integration of intellectual property into knowledge management policies can contribute to improving organizational performance and ensuring the legal compliance of their activities.

#### 4.3. Problems involving the use of copyrighted works in the public sector

Considering that numerous public institutions produce and use copyrighted content on a daily basis in various activities, such as internal and external communication initiatives, generating and disseminating informational content, training and development, distributing, promoting, and/or marketing products and services, preserving institutional memory, among many other tasks, one issue that needs to be addressed is how these objects are treated, assessing whether the practices typically adopted are appropriate for the purposes of public administration and comply with current legislation. A hurdle immediately emerges, since knowledge of the fundamentals of copyright, including the related legal and ethical aspects, is often scarce within public institutions. Obviously, this is not an obstacle exclusive to the Brazilian public sector, reflecting the characteristics of a broader social environment marked

by a lack of a culture of intellectual property and innovation. It is therefore not surprising that the implications that copyright can have on the activities of a public institution, even those that produce and/or disseminate protected content, are often ignored. Consequently, decision-making related to the use of these works, as well as assessing the correctness of use and access procedures, become problematic issues.

A first point to highlight in this reflection, therefore, is that the adoption of appropriate procedures for handling copyrighted content in public institutions is hindered by the limited knowledge these organizations hold on the subject. Therefore, addressing this problem primarily involves raising awareness and training among staff. Formal education and training processes could be promoted by organizations, either through their own corporate education resources or through partnerships with institutions specializing in staff training and development. We advocate that the limits, conditions, and precautions related to the use of protected works in the public sector should not be the exclusive domain of legal professionals, but rather involve all those who work with the production and dissemination of copyrighted content. Public institutions certainly have legal bodies that can offer the necessary technical support to address copyright-related issues. However, depending on the nature or urgency of the request received or the decision to be made, this approach does not always offer the necessary agility. We understand that seeking legal advice is a crucial resource available to public servants; however, it cannot be the only one. In our view, public prosecutors' offices should be the final resource for specialized legal guidance—for cases where accumulated institutional knowledge is insufficient to resolve highly complex issues—and for judicial and extrajudicial representation of public bodies in situations involving possible infringements of third-party rights or litigation. Copyright knowledge constitutes, ultimately, a type of knowledge or skill required of diverse actors in the context of the knowledge society, and it is desirable and beneficial for the Public Authorities to encourage its development among professionals with diverse backgrounds who make up their staff.

We also understand that the nature of the knowledge held by organizations, as well as the ways in which it is typically acquired, directly impacts the possibilities for its transmission and codification. In this sense, another problem identified in Brazilian public institutions is the frequent lack of written procedures, guidelines, manuals, or regulations governing the use of copyrighted works produced by them or applied to their products and services. In the absence of consolidated institutional knowledge, it will be difficult to transform tacit knowledge and experiences into formalized and systematized information, thus making it more easily assimilated and transmitted. Codifying standards and procedures can enhance

information flows within the organization, the absorption and sharing of knowledge, its application to organizational activities, and the generation of new knowledge.

The adoption and standardization of the practice of recording institutional knowledge in written documents, which can be easily accessed and consulted by employees, could make a valuable contribution to reducing common difficulties faced by professionals who directly deal with copyrighted works, such as questions regarding the classification of certain materials as protected content. How can we know, for example, if a photograph is in the public domain, especially when its authorship cannot be identified? Or how can we be certain, given that the list of objects listed in Law 9.610/98 and in the international treaties to which Brazil is a party is not exhaustive, whether a given type of work is considered analogous to another object covered by exclusive rights? Indeed, these are not trivial issues, which means that addressing them cannot be based on intuitive practices. It is imperative that civil servants are properly supported by documents that embody institutional knowledge and that they can access whenever necessary, thus creating references for the decision-making process. Codifying standards and procedures can ultimately reduce the risks of misuse of works and inadvertent infringements of third-party intellectual property rights, in addition to safeguarding the Public Administration's commitment to promoting good management and compliance practices.

#### 4.4. Basis for the inclusion of copyright in knowledge management policies

We continue our reflection without the intention of presenting complete proposals for the development of intellectual property policies or regulations applicable to the entire Brazilian public sector. We understand that the task must take into account the missions, activities, and particularities of each institution, and therefore, their treatment of intellectual works must be conceived and defined based on the needs and purposes of each concrete experience. Even so, we have identified some elements that can serve as guides for the work to be carried out from now on. They therefore represent basic principles for policymaking, establishing parameters to guide institutional debates.

The first point to be highlighted is that all public institutions, in compliance with the principle of legality—as established by Article 37 of the Federal Constitution (Brazil, 2016)—must comply with what is provided for and established by law and act (or refrain from acting) exclusively in accordance with the law (Di Pietro, 2023). If the principle of free will prevails among private entities (individuals or legal entities), and it is lawful for them to

base their actions on desires, needs, choices, or agreements, as long as these are not contrary to the law—broad legality—public entities are left with no alternative but to do what the law explicitly or implicitly authorizes and comply with all its provisions—strict legality. Therefore, observance of and respect for intellectual property rights, as established and protected by the Federal Constitution and ordinary legislation, is a duty of the Public Administration, at all levels of government (federal, state, and municipal). Furthermore, any departure from this principle imposes on the agencies and their employees the risk of disciplinary, civil, and criminal liability, depending on the situation. In light of this duty, we understand that a first pillar for developing knowledge management policies within the public sector that encompass issues related to intellectual property must consist of respect for the rights of third parties, obliging public institutions to strictly ensure legal compliance with the use of copyrighted works in their activities. Inseparable from this guiding principle is the idea that public institutions must be held accountable for any infringements of these rights, just as their employees must be held accountable for failure to comply with the policies established by the agencies on this matter.

The aforementioned principle does not presuppose the existence of a set of codified standards and procedures that guide and reference the actions of public servants involved in the production, use, and/or dissemination of copyrighted works. Therefore, it is important to emphasize that policies encompassing knowledge management and intellectual property should promote the process of registering and formalizing procedures applied to the treatment of copyrighted objects, through various instruments, such as regulations, manuals, and best practice guides. Furthermore, documents for formalizing the assignment of rights and authorization to use protected content should be standardized, according to their intended purposes, prioritizing simplicity and objectivity.

Another important value that cannot be overlooked concerns the public nature of the institutions' responsibilities. In this sense, their policies must be compatible with this, always maintaining a proper balance between property rights and other fundamental rights. We suggest here that, although national legislation is silent on the matter, legal doctrine and case law confirm the Public Administration's ownership of the property rights of intellectual creations produced by its employees. This fact, in theory, allows institutions to exercise a right of exclusion, preventing or limiting access to the content they produce. We understand, however, that the exercise of this right must be exercised with due caution, as it can have negative social impacts. We refer primarily to the fact that any limitations on access to and use of content produced by public entities violate other rights guaranteed to all citizens by the



Federal Constitution, such as access to information, education, or leisure. Or, otherwise, it could hinder the fulfillment of duties that the same Constitution attributes to the Brazilian State, such as the promotion and dissemination of cultural heritage, scientific-technological development and innovation in the country.<sup>2</sup>

A final aspect to be considered in this essay concerns the appropriateness of indicating the authorship of intellectual creations produced within the scope of public service. While there is no legal impediment to classifying certain content produced by public servants in the exercise of their duties as works of authorship—and case law confirms this understanding (Brasil, 2008)—we understand that authors are entitled, at the very least, to exercise their moral rights, provided this does not conflict with the purposes of public administration. In particular, we interpret the right to naming, one of the author's moral rights, as in no way interfering with or compromising the objectives and interests of public institutions. We therefore advocate that these institutions not only not violate this individual right of the creator of intellectual works but should, through knowledge management policies, safeguard this same right, harmonizing this guideline with their editorial and communication policies, for example.

Certainly, care must be taken to ensure that the exercise of the author's right to be named does not conflict with diffuse collective rights and interests. Depending on how they are asserted, some of the author's moral rights, as a public servant, may compromise the achievement of the purposes for which the works are intended. We can infer, for example, that the right to keep a work unpublished, to withdraw it from circulation when one's honor or reputation are harmed, as well as to alter it or oppose its alteration, may negatively impact the functions performed by the agencies to which they are affiliated, such as the development of public policies or the provision of certain services, especially those related to health, culture, education, science, social security, and other inalienable responsibilities of the Brazilian State, as per the Federal Constitution. Even so, considering the necessary balance between different rights, we do not foresee the possibility that the naming of authors threatens the purposes or results of the Public Administration's work. In this sense, noting that in a large part of Brazilian public bodies, institutional authorship is attributed to much of the informational content, we suggest that this practice be reviewed, formalizing in knowledge management policies the obligation of public organizations to provide employees who create intellectual works with the credits to which they are entitled by law.

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<sup>2</sup> Conforme estabelecido nos artigos 215, 216, 216-A, 218, 219, 219-A e 219-B da Constituição Federal (Brasil, 2016).



## Final considerations

This article aims to foster a discussion on the relationship between knowledge management and intellectual property in modern organizations, particularly those within the Brazilian public sector. To this end, we propose an analysis of the treatment of copyrighted works in government institutions. We seek to identify some of the main challenges faced by civil servants in the process of creating and using intellectual works and examine the extent to which these obstacles can negatively impact the activities and functions performed by public agencies.

The discussion highlighted that, across the Brazilian Public Administration as a whole, the knowledge held by civil servants on this subject is predominantly tacit and still incipient, with a generally limited information base that can be applied to solving everyday problems concerning the use of copyrighted works. The lack of practices for codifying knowledge and procedures was also highlighted, a factor that limits the references available for decision-making. Formal support provided to civil servants is largely provided by legal advisory bodies, a process that does not always develop with the practicality and agility required in some situations. Therefore, it seems clear that improving the practices observed in the Public Administration related to the treatment of copyrighted works is desirable and necessary, assuming that the inclusion of this subject in knowledge management policies presents a fruitful path forward.

The results of the analysis allowed us to develop a set of preliminary suggestions that can be used to develop principles for application to knowledge management policies, specifically considering addressing the most evident problems and gaps regarding the treatment of copyrighted works in the public sector. First, we understand that promoting intellectual property training for civil servants seems a desirable initiative, at least if applied to professionals working in the production and dissemination of information that incorporates copyrighted content. Another suggestion made in the study—which connects with the previous one, as it requires expanding accumulated institutional knowledge—is the promotion of the codification of procedures applied to the treatment of objects protected by intellectual property rights, through manuals, best practice guides, regulations, and related documents. Formally recording this knowledge and practices would create a set of references for guiding civil servants, in addition to contributing to facilitating the flow of information in technical areas and supporting the decision-making process. We must also remember that the knowledge held by an institution can be lost over time due to changes in the composition of

technical teams or even through the passing of generations. Therefore, the codification of this knowledge can serve as an important tool for its preservation and dissemination.

The study also sought to draw attention to the issue of identifying the authorship of intellectual creations produced within the scope of public service. We understand that both law and case law guarantee public servants the exercise of their moral rights as authors, provided these do not conflict with fundamental or social rights guaranteed by the Federal Constitution or with the duties, functions, and objectives of the Public Administration. Therefore, we infer that the naming of authors of intellectual works—among the various moral rights they enjoy by law—does not constitute a threat to the purposes of public institutions and should therefore be respected in practice and ratified in institutional policies. In this sense, noting that much of the informational content produced by public bodies (texts, images, videos, audio files, databases, etc.) is attributed to institutional authorship, we suggest reconsidering this guideline, granting due credit to their producers, in full compliance with the principle of legality, to the extent of their respective contributions.

Finally, it is always worth remembering that, in the context of the consolidation of the so-called knowledge or information society, the challenges facing the public sector are enormous, including adapting to a new informational paradigm, incorporating new tools and exploring technological frontiers, and meeting increasingly complex demands, all within a context of scarcity of resources and personnel. Addressing issues involving the rights of exclusion and access to essential goods—and information is one of them—compounds this reality, and the impacts on them caused by the intellectual property statute cannot be ignored. It is first necessary to consider the role played by the latter as an instrument for encouraging intellectual creations, which constitute levers for a country's scientific, technological, and cultural development. Within the sphere of action of public institutions, promoting a culture of intellectual property can be an interesting means of fostering the improvement and efficiency of their activities. It also ensures that they fulfill the duty imposed on them by the national legal system to observe full legal compliance in their actions.

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