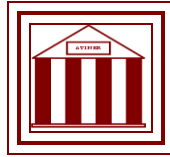


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**Copyright Issues on Multimedia  
Production in Distance Education**

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## **Copyright Issues on Multimedia Production in Distance Education**

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### **Abstract**

Content, learner support and certification can be considered the main ingredients for effectiveness in the design of multimedia teaching materials for distance learning. In the digital era, with the availability of different solutions for copying and editing content in the form of audio, video, image, text etc, it is essential the development of strategies and policies to improve design management and use of intellectual works, especially those related to multimedia teaching materials. According to legal perspective, the intellectual property is part of the intangible or incorporeal property, i.e., what is invisible and intangible, including contractual, obligational, and intellectual rights. It is the legal branch that deals with all the intellectual creations of human beings. In an increasingly digital world, where information becomes the basis of society, property right must be understood so that we can not only respect the creations of others, but also protect ours. This concern has become more relevant from the moment the authors of this article had to manage groups of teachers and employees who were developing instructional materials in digital format, such as audio, video, text, hypertext and software with animations and simulations for specific projects in the educational area. During the design process, many questions came to our minds, such as the acceptable situations that one can use the works of other authors without previous authorization or

the amount limit for texts or videos that can be reused as part of a new multimedia product. We intend to present these and other questions throughout the article, especially those which contain aspects related to distance learning products, which are essentially digital multimedia products. At the same time, it provides guidance to authors and other professionals involved in content production, considering, mainly, the Brazilian law, but also taking into account international initiatives such as Creative Commons.

**Key Words:** Content, Strategy, Intellectual Works, Policy

## **Introduction**

The educational process has undergone profound change over the past two decades due to technological revolution experienced worldwide, which eventually lead to social, economic, cultural, political, scientific and religious transformations that introduced a new way of conceiving education. Thus, it is possible to state that content, learner support and certification can be considered the main ingredients for effectiveness in the design of multimedia teaching materials for distance learning and its consolidation as a way to grasp more knowledge.

In the digital era, with the availability of different solutions for copying and editing content in the form of audio, video, image, text etc, it is essential the development of strategies and public policies to improve design management and use of intellectual works, especially those related to multimedia teaching materials in order to protect the Copyright Law, since it makes up the role of intangible assets due to the fact that they are the result of the mind creations of the mind in an abstract design. The Copyright Law itself provides guidance to authors and other professionals involved in content production, not only considering the context of Brazilian law, but also taking into account international initiatives such as Creative Commons.

Such questions led the authors, who are in the present moment involved in the management of various initiatives to perform a wide search with professionals involved in distance learning, with the expectation that it would be possible to draw a line of conduct for educators' actions involved on development projects and/ or use of instructional materials in order to respect the Rights of creation, following the technological evolution and respecting the Rule of Law that will be experienced in Brazil.

This research relied not only on the literature review and the study of specific legislation in the Brazilian scenario since teaching in distance learning is an increasing reality in Brazil and in the world, but also on the legal aspects of the other countries about this subject since their practice involvement ends up interfering in the decisions and in the conception of Law in Brazil. It is essential to pay attention to a political trend that attempts to regulate universal rules on issues that involve the Copyright Law, which will eventually be defined.

The result of this study is presented below, and it intends to be a text that will eventually serve as an initial basis to be used by the authors of instructional materials. Even though it was not conceived to replace the existing legislation, its main concern is with the possibility of expanding the space for discussion and reflection on a topic that is current and urgent as an alternative to sustain the proposed teaching method and as a condition to respect the human dignity in their condition of author - creator.



## **The Intellectual Property and the Copyright Law**

Like most areas of Law, the Copyright went through a historical process until it came to what we have today in terms of Brazilian legislation. Thus, according to Paranaguá and Branco [9], "... antiquity hasn't met a copyright system as the one conceived on contemporary era". Only in the sixteenth century licenses started to be granted to booksellers to publish certain books, however, this right was to link the name of the author to the work (right of nomination) and paternity (right to claim authorship of the work), as explains Fragozo [3]. In 1710 it was published the notorious Statute of Anne (Statute of Queen Anne), which gave publishers the right to copy a given work for a period of 21 years.

Paranaguá and Branco [9] also emphasize that "... only in 1886 that the first guidelines for a comprehensive settlement of copyright." In Brazil, according to Manso [6] "... the first legal provision that mention something in this regard is the law of 11 August 1827, which established the legal courses in Brazil". Then, yet according to Manso [6], other legal encodings emerged: the Criminal Code of 1830, Penal Code of 1890, the first Republican Constitution of 1891 (paragraph 626, art. 72), 496 Act of August 1, 1896, Medeiros Albuquerque Act on January 1917, The 5988 Act of December 14, 1973 which ended up with the current 9610 Act of February 19, 1998. The 9610 Act "rules copyright, comprising that designation the author's rights and what is related to them," being nowadays one of the key references, although it is also important to consider in some cases the specifics of the legislation applied to trademarks, software, etc..

In Brazil, unlike the United States and European Community countries that already have specific legislation on digital copyright, bills that address this issue are still being discussed by the Congress members. According to the authors Freitas, Avancini and Castro [7] "... because there is no specific Brazilian law that rules the use of material available on the Internet, teachers and educational entities refer to the Copyright Law (9610 Act of 1998), Computer Program Law (9.609 Act of 1998), as well as any other legal documents that provide for civil and criminal penalties for violators of intellectual property, and these were the rules that are being used to protect educational materials used in the learning ambiente of distance learning". Besides these, rules of international nature are also used in ratified agreements in Brazil, such as the TRIPS agreement - Trade-Related Aspects of Intellectual Property Rights and the use of analogy, to support the decisions of the judiciary, inasmuch as this is mandatory under penalty of nullity of the decisions, pursuant to Article 93, IX, of the Federal Constitution of 1988.

When we were verifying the laws that deal with copyright, we found out an implicit exemption for the justified use of certain intellectual works (small portions) by educators in the classroom, without requiring a previous permission from the copyright owners, since there is no logical viability of control or monitoring either by government agencies or by particular authors. According to Freitas, Avancini and Castro [7] "... the current Brazilian

Copyright law does not expressly provide the exemption, as it was done in the previous law in Article 49, I, "a" (Law No. 5.988/73), however the common understanding is that there is no offense in the use of copyright of intellectual works, provided that it is for exclusively non-profit teaching purposes in the schools."

With regard to copyright, it should be noted that rights management is a vast area that now includes aspects related to digital media. Moskowitz [8], when dealing specifically with digital rights management highlights the difference between the more traditional properties such as buildings and physical assets and intellectual properties, which refer to items that can generally be easily shared, causing problems already common today such as piracy of digital products, more specifically music and movies. The copyright has a dichotomous legal nature, reflecting his dual classification: Moral Law and Property Law.

According to Lima [5], "the moral right is that one generated by the relationship between created thing and creator, being directly linked to the person of the author, whose work is a sort of projection of his own personality." Thus, it is understood that this is a personalized, irrevocable, unpledged and absolute author's right, integrating the role of Personality Rights under Articles 11 to 21 of the Civil Code. For example, an interior designer orders a painting to a painter to decorate an environment and determines the chromatic tones to be used by the artist. Once completed, the painter delivers the canvas, which is promptly paid by the designer. Contrary to what one might believe, the interior designer owns the moral right of the project setting, whereas the painting rights remains the painter's property indefinitely, even though the art was custom-made.

This guarantee given to the painter to be eternally moral holder of the work is exactly the so-called right to parenthood, on this account Piva Jr et al explains that "Moral rights represent the permanent bonds that unite the intellectual creation of its author." The importance of recognizing the Moral Law as one that protects the right of the author in his work is to recognize the right of protection of the human being's dignity, i.e., it is nothing else but the preservation of ethics through known postures based on values, which aims to treat the individual as a subject of the law and as subject that fulfills an obligation. According to Lee [5], the property right "is the result of the publication of the work, or communication of the work comes from the public both by the author as by those authorized by it." This refers to the monetary aspect of intellectual work and, unlikely moral rights, it may be transferred, assigned or licensed.

For different reasons, discussions of "Digital Rights Management" (DRM), or Digital Rights Management, require consideration of the context in which a work is produced or distributed. The term Digital Rights Management - DRM - has its origins in the combined efforts of some vendors, their marketing staff and some other industry analysts in the late 1990's [10]. In a general way, creators produce a work aiming to trade it and so they have the right to charge the copyright. On the other hand, in such situations where profit does not

apply, it is expected from the users that the original author is quoted on the material to be distributed. Regardless being intended for commercial purpose, some rights are assured by the legislation to the author of an original work and, in this particular, it is reinforced due to the fact that some control over the creation of new works based on a particular original work is needed.

The copyright environment consists of three main aspects: rights (what can be protected by copyright) and exceptions (e.g. copies for private use or for public libraries); enforcement of rights (sanctions for making illegal copies and trading in circumvention devices); and rights management (exploiting of rights). In the online world, rights management may be facilitated by the use of technical systems called Digital Rights Management (DRM) systems [2] [3].

With the advent of the Internet, different services of file sharing arises every day making more and more difficult and complex the copyright control, resulting in an increasing of specific technologies that allow the track and trace of works authorship through technological solutions such as digital watermarks. Even so, the internationally widespread concept of "fair use" creates additional challenges, since it is often not clear what could be understood as acceptable use. Based on this, Moskowitz [8] lists four main factors to be taken in account when assigning whether the specific use of a work would be acceptable or not: (1) the purpose of the use, which includes differentiate commercial use of the educational use in specific contexts, (2) the nature of the original work, (3) the proportion or percentage of original work that will be used, and (4) the effect of the use of an original work relatively to the potential market of such work, which would be copied in whole or in part.

Moskowitz [8] stressed that the determination of what would be an acceptable use is something strongly dependent on the context, meaning that by simply quoting the original authors of a work would not be enough, suggesting that for each specific case the corresponding authorization were requested to the copyright holders. Such perspective results in different restrictions to projects involving the production and / or the use of multimedia given that the production of new products that aren't 100% originals would require permits for the use of each cited or adapted work whereas the use of existing multimedia products would require permits for copying.

Also related to multimedia, Moskowitz [8] points out that consideration related to security should comprise certain aspects: (1) multimedia is easily compressible and transferable, (2) the material digitalization in the analogic format is increasingly fast and inexpensive, and (3) the manufacture of digital material has become cheaper, resulting in an increasing margin profit to the organizations but also at the same time allowing anyone who is not the copyright holders to copy in an uncontrollable way, what may reduce profit margins. This author suggests that major economic sectors should be affected by the changes relatively to the convergence of the technological base to the digital base, because not only music and movies, but also books, articles and all kinds of materials are now more and more available in an electronic format through environments networks like the Internet.

### **What is Protected by Copyright Law?**

Intellectual works are those created by human being and expressed or published by a particular communication media with the purpose of being known. Even so, some sort of control relatively to access to such works is intended, more specifically in the case of the existence of potential profit.

The Copyright Act, Law or Rights. 9610 of February 19, 1998, with the additions sustained by Law No. 12.853/13, lists the types of intellectual works protected by copyright, however it is important to note that these only make up an illustrative list, not limited to them. Therefore, according to Gandelman [4], they are text, lectures, dramatic works, choreographic works, audiovisual works, photographic works, drawings, paintings, engravings, illustrations, maps, plastic works, translations with new intellectual creation, computer programs, compilations, dictionaries, among other possible works. Once it is known what types of copyrights are protected by the law, it's a matter of highlighting the necessary care that authors of digital and/or instructional contents should bear in their work.

### **What is not protected by Copyright Law?**

The Copyright Law or Act No. 9610/98 excludes from its protection, in its Article 8, various activities and common facts. According to Galdelman [4], they are: ideas, normative procedures, methods, systems, projects and even the mathematical concepts in themselves, diagrams, plans or rules that are intended for game development; business or simple mental acts; blank forms, texts of official acts; information for common use; isolated names and titles and commercial or industrial exploitation of ideas, information or knowledge available in an original work. Computer programs are protected by Act No. 9609 from February 19, 1998 (Article 2).

### **A Brief Orientation to Authors of Distance Learning Content**

Aiming to guide the authors of digital content and/or copyrights, especially for distance learning in Computer Science, here follows some suggested actions and cautions that authors should take during the development of their work. Ideal and acceptable situations are suggested, and those for which a previous authorization is indispensable.

#### *Ideal Situation: The Public Domain and related Terms*

In the distance learning content development, the ideal is to use third party works that are distributed under CC licenses (Creative Commons - <http://www.creativecommons.org.br/>) or those already in the Public Domain. Pictures, for example, can be found at web portals like Flickr (<http://www.flickr.com/creativecommons/>), where more than 20 million are available for

download or even to create derivative works. Additional examples of websites that use CC licenses can be found by accessing internet directories of free access such as that maintained by the organization responsible for developing standards of Creative Commons licenses ([http://wiki.creativecommons.org/Content\\_Directories](http://wiki.creativecommons.org/Content_Directories)).

In Brazil, the main portal with free use of material is the Public Domain Portal (<http://www.dominiopublico.gov.br/>). Works whose latest version is too old and/or whose authors have died for more than 70 years are also of public domain. Below follows some examples for a better understanding of this problem.

*Example 1: a score by Vivaldi has become public domain, but a recent interpretation by an orchestra is not public domain.*

*Example 2: a poetry of Shakespeare has become public domain, but a recent recitation by an actor in a movie is not public domain.*

*Example 3: a Greek sculpture in a museum can be photographed freely, but if a living photographer has taken a picture of this sculpture, no one can reuse or modify such photo without the previous authorization of the foresaid photographer.*

Thus, in such cases of public domain material or CC licensed, simply quoting the source where the work was obtained may be enough; however, restrictions that may eventually be indicated should be observed. For the remaining cases, a more careful analysis must be done prior to the partial or total use of the work, as discussed below.

#### *Acceptable Situations: Parts of Works*

The Brazilian legislation has not yet been updated to consider all possible cases, particularly those that are related to moral, copy, ownership and distribution rights via Internet. Thus, lawyers usually work with jurisprudence and the judges base their decisions on analogies, customs and general principles of Law, when cases are not foreseen in Law, in accordance with the provisions of Article 4, Law of Introduction to the Standards of the Brazilian Law, Law No. 12.376/10.

In the case of teaching materials produced in multimedia such as software, hypertext or videos, they can usually be seen as educational materials for academic nonprofit work. In these cases, the law allows the use of parts of the works of others, since the use does not generate losses to holders of moral rights, copyrights, property rights and distribution.

Whatever the case, the source where the work was withdrawn must always be quoted, with clear mention to the author's name, year of publication of the work and other references that might give the author the mental or intellectual creation rights in order to promote respect for his dignity as a human being. In Brazil, it is suggested the use of ABNT rules (<http://www.abnt.org.br/>) even if the material is obtained on the Internet, in this particular case quoting the address from where the material was obtained and the date it was accessed. In

the case of articles or creative works in the health field, the Technical Standards Vancouver (<http://www.ncbi.nlm.nih.gov/books/NBK7256/>) must be used.

To make use of parts of works of others without asking permission, it is suggested to use the minimum possible, such as 10 seconds of a movie or 10 seconds of a song.

*Example 4: a learning object (multimedia product) can quote a snippet of a movie, up to 10 seconds, as long as the source is quoted and the actors are not identified; if an actor can be visually identified, and he is still alive, a previous permission should be requested, at least for the actor.*

*Example 5: A product can quote a passage of a lyric, up to 10 seconds, as long as the source and the author of the music are quoted.*

With regard to texts, the rules tend to be more flexible, since the complete work is never used without previous authorization, clearly stating in the quotation who is the original author of the work and explaining what passage was exactly copied.

*Example 6: if a poem is published on the Internet, it is acceptable to use a small excerpt from that as long as the source and date of access are quoted.*

*Example 7: if a book contains texts of interest for someone, the quoting of a part within a learning object is acceptable as long as the source is mentioned.*

For cases where the use of a large part of a work is intended or even the complete work, a previous permission is required, as described below.

#### *The Situation that Requires Permission: Use of Complete Works*

The huge problem refers to the use of complete works, because in this specific case a previous authorization from the copyright holders is mandatory.

Examples of complete works:

- Full text of a poetry.
- Audio or video with the declamation of the full text of a poetry.
- The full lyrics of a song.
- Audio or video with sound related to the full text of a song.
- Texts in general, even if they have been published on the Internet.
- Covers of magazine, books or newspapers.
- Comics strips, even with just one frame.
- Photography, drawing, schematic representation or a diagram.
- Logos visually indicating the brand name of products and related services.

- Advertising piece that appears as propaganda in a magazine, book or newspaper.

In all cases in which the complete third-party works are not in the public domain, a previous permission must be asked to the author, his heirs or successors and holder of rights legally granted or constituted, both for use in specific multimedia product and for their subsequent distribution media like Internet, TV, CDs, DVDs, etc; alternatively credits to the rightful owner can be collected or payment can be made to the creator of the work or to the entitled person.

It is advisable the avoidance of a direct citation of names of persons involved in controversial cases or situations affecting their image, because it can cause compensation payment or injury compensation. However, it is possible to mention the history, but without directly mentioning the names of individuals or organizations involved, also avoiding the presentation of images of living persons without obtaining their previous permission, especially if they were cases of great social upheaval.

Regarding comic strips, one possible solution is to redo the them based on the original, using software or specific portals, such as Strip Generator (<http://stripgenerator.com/strip/create/>), and so the original story will only and solely be used as a basis for a new strip.

Almost all projects in the public sphere do not have funds to pay for permission use of third party works and / or reuse with the objective to create derivative works. In these cases, if the copyright holders require any form of payment, the option for not using the product work in multimedia design, especially if this product is intended to be digitally distributed should be done in this case. Except for Public Education Institutions, considering their favorable scenario of educational non-profit products, although in some cases restrictions on distribution and / or creation of derivative works may apply.

## **Final Remarks**

Projects for production of digital and educational products in its multiple media, focusing on distance learning, considering their specificity, require the establishment of a specific policy on intellectual property that is in line with other policies of the school/organization.

In the case of projects that produce multimedia, the main precautions to be observed tend to refer to the collecting of authorization for the use of third party works prior to the production of any product that make use of copyrighted materials as well as the collecting of assignments of copyright, patrimonial and distribution rights of the members of production teams. In another words : one must have authorization to use works of others and it is also needed that those involved in multimedia production assign the rights of the products created by them to the organization where they work.

Yet, in the case of projects involving the use of multimedia products, such as distance learning courses and classroom courses enhanced with the use of multimedia, the main concern tends to refer to obtain permits for such use, when the rights are reserved, or even store in a proper way the information that certifies that a work may be used freely, when the rights are not necessarily reserved. Thus, considerations about intellectual property must appear from the early stages of each project, with direct consequences in the requirements of multimedia products to be produced and the management of costs related to production and / or use [1].

Based on the presented arguments, this text sought to contribute to the discussion around the theme of intellectual property in view of the production and use of multimedia products in distance learning. It is perceived by the presented arguments that this is a broad and complex topic which certainly demands constant reference to the current legislation, which tends to be updated with some frequency based on the technological evolution of the society. Besides being a text that aims to expand discussion and reflection on how to ensure the creator his creation rights, it also aims to ensure the author, through his creation, the respect for the right to preserve his human dignity.

## References

- [1] Commission Staff Working Paper - *Digital Rights Background, Systems, Assessment*, European Commission, February 2002.
- [2] J. Duhl, S. Kevorkian, *Understanding DRM Systems*, IDC, 2001.
- [3] Fragoso, João Henrique da Rocha. *Direito Autoral: da antiguidade à Internet*. São Paulo: Quartier Latin, 2009, p.50/51.
- [4] Gandelman, H. *O que você precisa saber sobre direitos autorais*. Rio de Janeiro: Ed Senac Nacional, 2004.
- [5] Lee, J. A. A. *Curso de Propriedade Intelectual para Designers*. John Person: Ed New Ideas, 2006.
- [6] Manso, E. J. V. *O que é Direito Autoral*. São Paulo: Brasiliense, 1987.
- [7] Freitas, MCD; Avancini, HB; Castro, JEEE *Intellectual property and distance learning on the Internet: what does the Brazilian legislation say?* Available at: <http://derin.uninet.edu/cgi-bin/derin/vertrabajo?id=10>. Access: 22 June 2010.
- [8] Moskowitz, S. Introduction - Digital Rights Management. In: Zeng, W. & Yu, H. & Lin, C. (Editors). *Multimedia Security Technologies for Digital Rights Management*. Academic Press. 2006. ISBN 0123694760. 520p.
- [9] Paranaguá, P., Branco, S. *Direito Autoral*. Rio de Janeiro: Ed FGV, 2009.
- [10] Piva, Dilermando Jr. Amorin, Joni de Almeida. Rodrigues, Maria Rafaela Junqueira Bruno. *Direito autoral para educação a distância*. Curitiba: CRV, 2013, p. 25.
- [11] B. Rosenblatt, B. Trippe, S. Mooney, *Digital Rights Management - Business and Technology*, M & T Books, 2003.