Copyright Issues on Multimedia Production: Strategies for Intellectual Property Management

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This essay aims to discuss the importance of defining strategies and policies for the copyright management in the development of multimedia teaching materials, especially for distance learning purpose. At the same time, it provides guidance to authors and other professionals involved in content production, considering, mainly, the Brazilian law, but also taking in account international initiatives such as Creative Commons.

Keywords: Content; Copyright; Project; Multimedia.

1. Introduction

Content, learner support and certification can be considered the main ingredients for effectiveness in producing multimedia teaching materials meant 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 becomes essential the development of strategies and policies for a better management of concept and use of intellectual works, especially those related to multimedia teaching materials.

The intellectual property, in a law’s branch perspective, is part of the intangible or incorporeal property; or in other words, what is invisible and intangible, including contractual, obligational, and intellectual rights. It is the branch of law that deals with all the intellectual creations of mankind.

In an increasingly digital world, where information becomes the base of the society, property right must be understood so that we cannot 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 educational area.

During development processes, 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 limit quantity of texts or videos that can be reused as part of a new multimedia product. These and other questions are presented throughout this text, especially those which contain aspects related to products for distance learning, which are essentially multimedia digital products.

Such questions led the authors, who are in the present moment involved in the management of various initiatives, to perform a wide search, interviewing lawyers, attorneys, authors, businessmen from literary industry and many other professionals, with an expectation that it would be possible to draw a proper line of conduct to educators’ action in development and / or use projects of instructional materials. This research also relied on the literature review and study of specific legislation to the Brazilian scenario.

It is important to notice that the authors participated on many different projects involving multimedia production and e-learning courses. These projects offered the opportunity to check many of the recommendations presented in this text. The first project that should be mentioned was undertaken by the São Paulo’s State Virtual University (UNIVESP); in this case, different courses were launched in 2009 by the Department of Higher Education [11] aiming at the expansion of public higher education in São Paulo’s State, in Brazil. Another project that should be mentioned is focused on digital content production: ConDigitais [12] is an initiative of the Secretariat of Distance Learning of the Ministry of Education in Brazil that started in 2007 through a public notice providing up to 75 millions of dollars in resources.

The result of this study is given 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, though not in any way replace the existing legislation, particularly the different interpretations in each country.

2. The Intellectual Property and the Copyright Law

According to Paranaguá and Branco [9], "... antiquity haven’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.

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.
According to Paranaguá and Branco [9], "... 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 courses followed: 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 ambience of distance learning."

When we checked the laws that refer to 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.

According to the authors Freitas, Avancini and Castro [7] "... the current Brazilian Copyright law does not expressly provide for 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.

Copyright is of a dichotomic legal nature, reflecting its dual classification: Moral Right and Patrimony Right.

According to Lima [5], "the moral right is that one generated by the relationship between created thing / 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. For example, an interior designer orders a painting to a painter to compose an environment, and determines the chromatic tones to be used by the artist. Once completed, the artist delivers the canvas, which is promptly paid by the designer. Contrary to what one might believe, the designer owns the moral right of the project setting, whereas the painting, even if customized is indefinitely the painter’s property.

This assurance given to the painter (to be eternally the moral holder of the work) is exactly the so-called parenthood right.

Since the economic rights, according to Lee [5], "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, unlike moral rights, may be transferred, assigned or licensed.

The discussions about "Digital Rights Management" (DRM) require for different reasons, a proper 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 file sharing services that rend more and more difficult and complex the copyright control arise every day, resulting in a growing demand for 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 determining 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.

3. 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 Law, or Act No. 9610 from February 19, 1998 lists the types of intellectual works protected by copyright; however, an important remark shall be indicated: these are plainly illustrative samples, not the complete and definite list. 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.

4. What is not Protected by Copyright Law?

The Copyright Law, or Act No. 9610 excludes from its protection, in its Article 8, various activities and common facts. According to Gandelman [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).

5. 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 care 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.

5.1 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).

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 Mozart has become public domain, but a recent interpretation by an orchestra is not in the public domain.
Example 2: a poetry of Fernando Pessoa has become public domain, but a recent recitation by an Actor in a movie is not in the public domain.
Example 3: a Greek sculpture in a museum can be photographed freely, but if a live photographer has taken a picture of this sculpture, no one can reuse or modify such photo without the previous authorization of the aforesaid photographer.

Thus, in such cases of material under public domain or licensed under CC, 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.

5.2 Acceptable situations: parts of works

The Brazilian legislation has not yet been updated to the point of considering all possible cases, particularly related to moral, copy, ownership and distribution rights via Internet. Thus, lawyers use to referring to analogies when dealing with cases not comprised by any specific law. In the case of teaching materials produced in multimedia such as software, hypertext or videos, they can nearly always be seen as educational materials for nonprofit academic work. In these cases, it is permitted by the law the use of parts of third parties works, provided that such use does not generate losses to the holders of moral copy, ownership and distribution rights.

Whatever the case, the source where the work was obtained should always be quoted, with clear mention to the artist's name, year of publication of the work, etc.. 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.

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 multimedia product can quote a snippet of a movie, up to 10 seconds, provided that the source is quoted and that is not possible to identify which are the actors; if the 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, provided that the source and the author of the music are duly quoted.

With regard to texts, the rules tend to be more flexible, provided that 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 is the exact passage that was copied.

Example 6: If a poem is published on the Internet, it is acceptable to use a small excerpt from that provided that the source and date of access to this source are quoted.

Example 7: If a book contains texts of interest for someone, the quoting of a part within the new multimedia product is acceptable provided that 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.

5.3 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 authorization is mandatory both for the use in the specific multimedia product, as for the subsequent distribution in the media such as Internet, TV, CDs, DVDs, etc.

It is advisable the avoidance of a direct citation of names of persons involved in controversial cases or situations affecting their image. It is however possible to mention the history, but without directly mentioning the names of individuals or organizations involved, avoiding also the presentation of images of living persons without obtaining their previous permit.

Regarding comic strips, one possible solution is that it is redone, based on the original comic strip, using the software or specific portals, such as StripGenerator (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 scope do not have funds to pay for use permission of third party works and / or reuse with view 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.

### 6. Questions and Answers

Below are some questions and possible answers on key concerns that arose during our participation in projects over the past few years, always in accordance with current legislation.

**What kind of complete works can be used without a previous authorization, in the event that the intention is just to make a citation?** One possible answer would be that only those complete works that are public in domain or do hold a copy permission statement, such as Creative Commons licenses (http://www.creativecommons.org.br/) can be copied and one should always choose to quote only passages so as not to generate losses to the copyright holder of the work.

**What kinds of excerpts of works can be used without a previous authorization, in the event that the intention is just to make a citation? In these cases, what would be the maximum percentage of the work?** One possible answer would be that although the current legislation does not provide for the percentage, excerpts of texts should not exceed 80% of the total and at most 10 seconds, for music, movies etc.

**What are the texts, images, audio, video, etc… that can be characterized as public domain on the Internet?** One possible answer would be that for those whose authors died more than 70 years ago, or those that explicitly have been indicated as under public domain and / or an authorized copy of a specific material, such as Creative Commons licenses (http://www.creativecommons.org.br/).

**What are the texts, images, audio, video, etc… that can be characterized as public domain on other media except the internet, such as books, magazines, movies, music etc?** One possible answer would be that for those whose authors died more than 70 years ago, or those that explicitly have been indicated as under public domain and / or an authorized copy of a specific material, such as Creative Commons licenses (http://www.creativecommons.org.br/).

**In cases where the works are in the public domain, is it enough to quote the source where the work was found?** One answer would be yes, but in this case is essential to quote the more detailed possible, in accordance with ABNT normative; if the material was obtained from the Internet, it is also important to indicate the date when the material was accessed, as well as the webpage address.

**When using text, images, etc… from blogs or personal websites available on the Internet, how to identify whether it is an unauthorized copy or not?** One possible answer would be that one should always try to search for the original source, and once found, this one should be quoted. If there is a clear evidence that the material found is an unauthorized copy, one should avoid using.

**The citation of trademarks such as Bom Bril, Biotônico Fontourg and Risqué in multimedia products require a previous authorization?** One should consider the legislation related to trademarks, as indicated in the legal rules established by the Industrial Property Law? One possible answer would be that the citation of trademarks should be avoided because they are considered complete works that express the visual identity of the holder of the trademark. If the use is considered essential, it is necessary to obtain a previous authorization from the trademark holder with a clear indication of the intended use. Do not forget to put the trademark when quoting the brand.

**Unlike what happens to texts, what is meant by citations in multimedia products such as audios, videos and software? Considering that some publishers define as acceptable a citation of up to 10% of a work for educational purposes, one can assume such percentage as the acceptable for the use in different types of multimedia products?** One possible answer would be that as the legislation does not consider all cases, one should refer to analogies. Roughly speaking, one should do what is commonly done in academic works, that is, the citation of only a small portion of the work, and presenting in multimedia product reference all source data, according to the ABNT normative whenever possible.

**What is defined as a text in public domain? Besides all the texts written by authors dead for more than 70 years, is there any other case where the rights are no longer reserved and the work automatically becomes public domain?** One
possible answer would be that as the legislation does not consider all cases, it can be assumed to be of public domain the works of any author who died more than 70 years, provided that the work has not been reprinted and / or a new updated version is not available. If it is unassured, one must request permission before the use.

What is the specific legislation related to musical works? What are the differences between the use of the lyrics of a song in the form of a text and the music of a song in the form of audio (sound)? In the case of a music of a song in the form of audio (sound), a previous authorization from the singer (artist) is also needed or only from the composer? One possible answer would be that because the products have educational and non-profit reason, the use of a small piece of the work is acceptable, provided that the source is mentioned. If it is a long stretch, it is then advisable to request a previous authorization.

What is the legislation related to the use of imagery obtained from the Internet? Are there restrictions concerning to images containing tags, such as names of magazines, newspapers, products and any other related stuff? One possible answer would be that as the legislation does not consider all cases, it can be assumed that only small parts of works can be copied and quoted without a previous authorization. In cases of items such as logos, images, photos, diagrams, drawings, cartoons, advertisements, book covers, magazine covers, newspaper front pages, etc… because some of them are considered complete works, one should obtain a previous authorization from the copyright holders.

Assuming that previous authorizations from third parties for the use of their works are needed, which would be the appropriate document templates for each case? These documents need to mention aspects of property rights and distribution rights or only aspects of copyright are enough? One possible answer would be that one email with an authorization is enough, provided that the message is a response to the letter of the authors of multimedia products asking for permission both to use the work in the product and to distribute via Internet, if appropriate, using Creative Commons (http://www.creativecommons.org.br/). So, the authors of the products that must ask for the previous authorization and also be responsible for having the authorization before the project is completed.

In cases that a previous authorization is required, an authorization by email is enough or one should get a formal document signed by the copyright holder, quoting the work and the product that makes use of the work? One possible answer would be that as above indicated, an authorization by email is enough.

In the cases where it is intended to make use of comic books, pictures, movies, music etc… whose authors are individuals or companies from abroad, which legislation should be considered, the Brazilian or that of the country where the work was originally produced? In these cases the formal documents must be signed in Portuguese to be valid in Brazil? One possible answer would be that as the legislation varies from country to country, it is suggested to make only use of works distributed in Brazil.

In the cases that an authorization is obtained, what should I do with it? One possible answer would be that the liability of multimedia products falls on the authors and production team whose names show up in the credits. Therefore, such authorizations should be retained by the authors for at least 5 years after project closure.

7. Final Remarks

Projects for production of educational digital content 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 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 other 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.
References


