

itm

Im Rahmen der Vorlesung  
„Urheberrecht“ von Prof. Dr. Thomas  
Hoeren wird am

**02. Juli 2018 um 16 Uhr  
im Hörsaal JUR 1**

**Prof. Dr. Marcos Wachowicz**

Federal University of Paraná (Brasilien)

einen Vortrag zum Thema

**Analysis of the 20 years of validity of  
the Brazilian Copyright Law**

halten.

Alle Interessierten sind herzlich  
eingeladen!

# About GEDAI

## Research Group on Intellectual Property and Copyright Law



# GEDAI

Grupo de Estudos de Direito Autoral e Industrial  
Universidade Federal do Paraná

[www.gedai.com.br](http://www.gedai.com.br)

- It was set up in 2007.
- Reserach on the development of Intellectual Property Law within the Information Society by means of comparing the international system of copyright and industrial rights.
- Research on cultural diversity and reflections about the regulation of intellectual rights in relation to the challenges faced by the Information Society.

# **GEDAI**

## **Main Research Topics**

- **Intellectual Property – Innovation and Knowledge**
- **Copyright Law: Fundamental Rights and Cultural Diversity**
- **Creative Economy: Intellectual Property and Development**
- **International Regime of Intellectual Property**
- **Information Society: Democracy and Technological Inclusion**
- **Rights of the New Information Technologies and Communication (ICT)**
- **Intellectual Property and Competition Law**

# Copyright Internacional Conventions

## Brazilian participation



- **Berna Convention** ( Dec. 75.699/75 )
- **Universal Convention** ( Dec. 76.905/75 )
- **Roma Convention**, copyright (Dec. 57125/65 )
- **Genebra Convention** regarding the production of phonograms (**Dec.76.906/75** )
- **Estocolmo Convention**, constituting the O.M.P.I. ( Dec. 75.541/75 )
- **Inter-american Convention** regarding copyright ( Dec. 26.675/49)
- **UNESCO Cultural Diversity Convention** 2005
- **Marraquexe Tract** ratified in 2015

# Brazilian Law

## Main Laws regarding Copyright

- **1988 Federal Constitution**
  - art. 5º XXVII , XXVIII e XXIX
- **1998 Software Law**
  - Law nº 9.609/98 replacing the 7.646 from 19.12. 1987 law
- **1998 Copyright Law**
  - Lei nº 9.610/98 replaced nº 5.988 from 14.12.1973 law
- **2013 Collective Copyright Administration Law**
  - Law nº 12.853/13 partially replaced the nº 9.610/98 Law

# Copyright Law (9.610/98)

## Completed 20 years of diligence

- 9.610 Law, from 20th February of 1998, consolidating the Copyright Law in Brazil due after a profound public debate started on the late 70s
- We emphasize
- The current Brazilian copyright legislation was created in a 50 years obsolete context
- It was unimaginable the technological revolution impacts in modern society regarding creation, production and circulation of data

# Copyright Law (9.610/98)

## Completed 20 years of diligence

- **Criticism started due to**
- Copyright legislation criticism started immediately after its own creation, due to being unfit to the technological context, as its principles did not encompass technological issues.
- The 9.610 law from 20<sup>th</sup> February of 1998, is a copyright landmark, but is widely restricted to address analogic technology, mainly concerned about the expenses encompassing data production itself, in order to further protect the cultural goods.

# Copyright Law (9.610/98)

## Completed 20 years of diligence

- **Since the Copyright law was signed, it has been a target for intense criticism**
- A portion of the doctrine pledges that data protection advanced due to the legislation
- On the other hand, a progressively more representative portion of the doctrine pledges that the extended legislation process intensively limited the law to the current information society.

# Copyright Law (9.610/98)

## Completed 20 years of diligence

Copyright law was issued in industrial society (analogic technology) aiming;

- To create a juridical protection centered in the author.
  - The exclusivity is born as a requirement to grant author's economic autonomy, enabling to proceed the creational process
- To grant a financial outcome facing author's investments
  - The protection to editors aimed to improve the dissemination of arts and sciences.

# Copyright Law (9.610/98)

## Completed 20 years of diligence

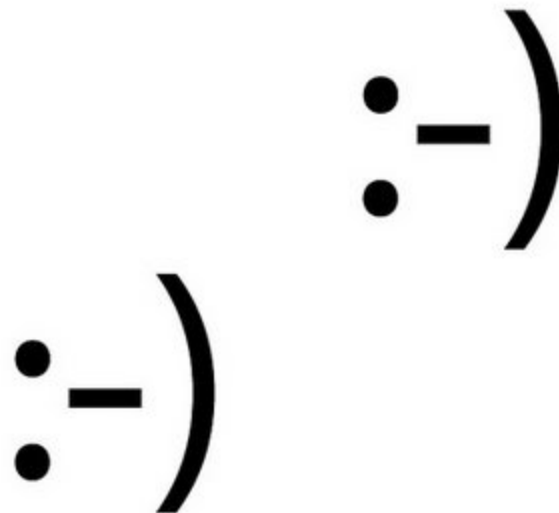


- The technological progress enabled great dissemination of previously copyright protected data. The obsolete economic model has been progressively abandoned and replaced by the informational society peculiarities.

# Copyright Law (9.610/98)

Completed 20 years of diligence

- Intellectual goods employment and applicability in informational society:
  - Unprecedented edition, traffic and reproduction procedures;



# Copyright Law (9.610/98)

**Completed 20 years of diligence**

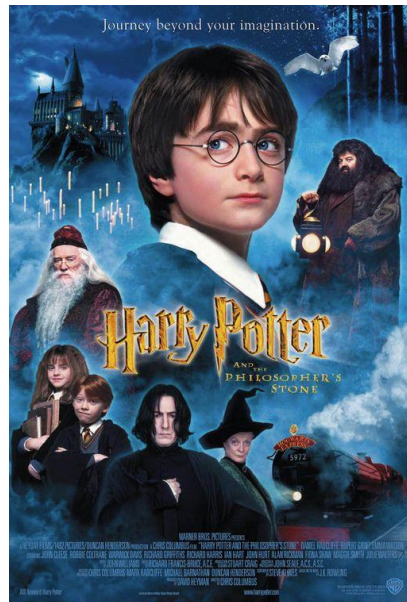
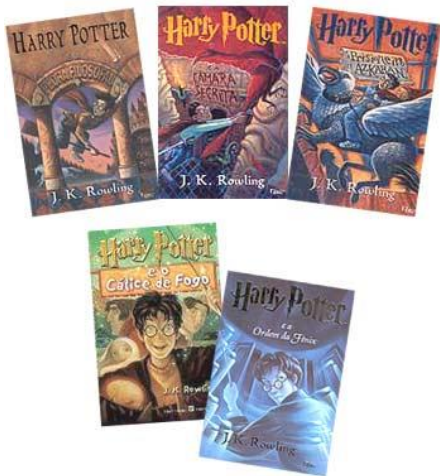
- **Employment and applicability of intellectual goods in the informational society**
  - Unprecedented author's characteristics



# Copyright Law (9.610/98)

## Completed 20 years of diligence

- Employment and applicability of intellectual goods in the informational society
  - Unprecedented diversity



# Copyright Law (9.610/98)

## Critical analysis

- **Employment and applicability of intellectual goods in the informational society**
  - Unprecedented multimedia diversity



# Copyright Law (9.610/98)

## Critical analysis

– Employment and applicability of intellectual goods in the informational society

– Unprecedented efficiency requirements to manage and organize control



# DRM

~~Massacre~~  
**Digital Rights Management**



# Copyright Law (9.610/98)

## Critical analysis

- **Employment and applicability of intellectual goods in the informational society**
  - Unprecedented organization issues and distribution rights



# Copyright Law (9.610/98)

## Critical analysis

- **Employment and applicability of intellectual goods in the informational society**
  - Unprecedented editing and reproduction techniques
  - Unprecedented manners to create
  - Unprecedented diversity
  - Unprecedented multimedia nature
  - Unprecedented efficiency requirements to organize and manage copyright
  - Unprecedented manners to organize, collect and distribute copyright

# Copyright Law (9.610/98)

## Actualization Requirements

**Copyright Law has completed 20 years. Does it need to be edited?**

- ✓ The main issues are yet valid
- ✓ However they are insufficient due to technological issues
- ✓ It is required to balance public and private interests
- ✓ A paradigm revision is required in copyright and cultural rights

# Copyright Law (9.610/98)

## Society peculiarities

### ➤ I National Cultural Convention (2005):

*“promover debates públicos sobre direitos autorais e a criar um órgão estatal capaz de regular os direitos autorais, atuar na resolução de conflitos na gestão coletiva e garantir o acesso universal aos bens e serviços culturais. “ – To debate whether to create a public administration regarding copyright*

#### ▪ Aimed to debate the society itself

- The mandatory requirements to review the current legislation regarding copyright
- To define the public role in copyright

# Copyright Law (9.610/98)

## Society peculiarities

- ✓ 1<sup>st</sup> International Debate , 7 National Debates and over 80 local Debates
- ✓ Debate “Os direitos autorais no século XXI” – Rio, dez/07 – “The XXI century copyright issues”
- ✓ Debate “A Defesa do Direito Autoral: Gestão Coletiva e Papel do Estado” – Rio, jul/08 – The defence to copyright law and public participation
- ✓ Debate “Direitos Autorais e Acesso à Cultura” - São Paulo, aug/08 – Copyright Law and Cultural issues
- ✓ Debates “Autores, Artistas e seus Direitos” - Rio, out/08 – Authors, artists and their rights
- ✓ International Copyright Debate - Fortaleza, nov/08
- ✓ Fórum Livre do Direito Autoral: o domínio do comum (UFRJ) – Rio, dec/08 – Open copyright discussion
- ✓ Congressos de Direito de Autor e Interesse Público (UFSC and FGV – SP) – Fpolis, may/08 e São Paulo, nov/09, Fpolis, nov/10 - Copyright and Public Interest Law Conference

# Copyright Law (9.610/98)

## Society peculiarities

✓ Public referendum regarding internet issues

**14<sup>th</sup> June of 2010** – the proposition was public accessible

For 79 days everyone and every institution could contribute online, followed by public access

8431 contributions were performed encompassing people, institutions and organizations

# Copyright Law (9.610/98)

## Society peculiarities

### Dilma Rousseff – Chronogram up to august/2016

- ✓ **25<sup>th</sup> of April to 30<sup>th</sup> may in 2011:** propositions were sent regarding alterations of the current law
- ✓ **4<sup>th</sup> may:** Editing suggestions were presented to the National Board of Public Issues, explicating the directions to improve the federal legislation
- ✓ **Debate “A Modernização da Lei de Direitos Autorais: contribuições finais para o APL”,-** Copyright actualization – final contributions – took place in Brasilia, among 31<sup>th</sup> of may and 1<sup>st</sup> of June in 2011, promoted by the Copyright Department in the Culture Ministry
- ✓ **Up to 14<sup>th</sup> of july:** Final proposition submission to the Culture Ministry, review by the inter-ministerial copyright joint.
- ✓ **Up to 15<sup>th</sup> of july in 2011:** final proposition was submitted to Civil Ministry

# Copyright Law (9.610/98)

## Society peculiarities

### Michel Temer – New directions

- ✓ **27th October of 2016:** The Supreme Court validated the 12.853/2013 law regarding copyright and public affairs
- ✓ **09<sup>th</sup> May of 2018 :** Requirement approved by the Brazilian depute House, to debate the 6.177/2009 law project wrote by Dep. Carlos Bezerra, that summarizes all Depute House copyright propositions

# Partial Actualization on Copyright

## 1998 - 2018

- The main adaptations encompassed two plans:
  - **Constitutional plan:** Due to the **n. 48 of 2015** amendment, that edited and complemented the art. 215 of the Federal Constitution
  - **Infra-constitutional plan:** regarding the **n° 12.853 law of 14th august in 2013**, editing 5°, 68, 97, 98, 99 and 100 articles, increased the 98-A, 98-B, 98-C, 99-A, 99-B, 100-A, 100-B and 109-A articles, revokes art. 94 of the n° 9.610 law, from 19<sup>th</sup> February of 1998, addressing public issues encompassing copyright

# Copyright Actualization

## Motivations (I)

Disproportionality between rights due to law  
benefiting either author's interests or social  
modern requirements

# Copyright Law

## UNESCO 2005 Cultural Diversity Convention

- Copyright requires more than the sole author's protection
- However, authors diversity precisely relies in a certain protection level



# Copyright Law

## UNESCO 2005 Cultural Diversity Convention

- UNESCO Diversity Convention proposes a new paradigm
- A new possibility to improve copyright regulation, in order to globalize benefits
- Copyright axes must follow extended propositions to improve cultural diversity.



# Copyright Law

## UNESCO 2005 Cultural Diversity Convention



- Diversity protection and promotion of cultural expressions are not submitted to any antagonism, as they must not negatively interfere in one another
- The absence of copyright impairs cultural diversity, as also the absence of cultural diversity unable the existence of copyright, but solely investment protection laws.



# Copyright Law

## UNESCO 2005 Cultural Diversity Convention

- The convention differs by its 4<sup>th</sup> article:
  - a) **Cultural Content** classified by a symbolic feature, dimension and cultural value, originated or expressed by cultural identities.
  - b) **Cultural Expressions** are composed by expressions individually created by social groups, withholding social content



# Copyright Law

## UNESCO 2005 Cultural Diversity Convention



Defines public and cultural measures as those related to culture itself, whether local, regional, national or international. Focusing culture as the expression that aims direct individual, group or social impact:

- **Creation,**
- **Production,**
- **Dissemination**
- **Activities, goods and services distribution**
- **Accessibility to those issues**



# Copyright Law

## UNESCO 2005 Cultural Diversity Convention

The Convention regards activities, goods and cultural services that are mostly encompassed by copyright law protections

We may observe the particular features of intellectual goods, such as:

- (i) Intellectual goods as economic features**
- (ii) Intellectual goods as art itself, withholding entity, value and cultural meaning**



# Copyright Actualization

## Copyright Cultural Dimension and WIPO

WIPO pledges that copyright law are juridical instruments directed to protect and assure author's rights and their creations, contributing to the social and economical development of people

WIPO pledges that copyright plays a major role to

- ✓ *Articulate contributions to distinguish interested cultural industry groups*
- ✓ *Improve the interface among the industry and society*



# Collective Copyright Administration Law

## Actualized by the n. 12 .853/2013 Law

### Main adaptations:

- Actualize administration system
- Assure a greater transparency and efficiency
- Enable effective author and society supervision
- Associative autonomy
- Access to systemic copyright administration
- Prohibition of conditions and confidentiality regarding secrecy clauses

# Copyright Law Actualization

## Aims to Review Copyright Law

### The four main ones encompass:

- (i) Actualizations due to international laws;
- (ii) Actualizations due to constitutional aspects;
- (iii) Actualizations due to informational society paradigms; and,
- (iv) Actualizations due to culture role on national development plans

# Copyright Law Actualization

## Actualizations due to International Measures

Berna Convention addressed 1967 Estocolmo determinations and encompassed the three steps rule, related to reproduction rights regarding someone else authorship:

- (i) Special scenarios;
- (ii) Not conflicted by author's economical interests; and,
- (iii) Not unjustifiably impair the legit author's interests

# Copyright Law Actualization

## Actualizations due to International Measures

World Intellectual Property Organization  
(WIPO):

- (i) Recognized Cultural affairs as a requirement to concede copyrights
- (ii) Copyright is a juridical instrument to protect the author, cultural, social and economic development

# Copyright Law Actualization

## Actualizations due to International Measures

United Nations Educational, Scientific and Cultural (UNESCO):

- (i) New International paradigm established by 2005 UNESCO Convention regarding Cultural Protection and Promotion of cultural expressions
- (i) To create new national legal instruments to regulate cultural diversity

# Copyright Law Actualization

## Actualizations due to Constitutional Affairs

The constitutional principles granted in article 215 of Federal Constitution related to cultural expression:

- (i) defesa e valorização do patrimônio cultural brasileiro (**Brazilian cultural promotion**)
- (ii) produção, promoção e difusão de bens culturais, (**Brazilian cultural dissemination**)
- (iii) democratização do acesso aos bens de cultura, e, (**Brazilian cultural democratization**)
- (iv) valorização da diversidade étnica e regional. (**Regional and ethnical diversity promotion**)

# Revisão da Lei Autoral

## A Emenda Constitucional nº 48, de 2005

**Article 215. The state shall ensure to all the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions.**

(CA No. 48, 2005)

- Paragraph 1. The State shall protect the expressions of popular, Indian and Afro-Brazilian cultures, as well as those of other groups participating in the national civilization process.
- Paragraph 2. The law shall provide for the establishment of commemorative dates of high significance for the various national ethnic segments.
- Paragraph 3. The law shall establish the National Culture Plan, in the form of a multiyear plan aimed at the cultural development of the country and the integration of government initiatives to attain the following:
  - I – protection and appreciation of the value of Brazil’s cultural heritage;
  - **II – production, promotion, and diffusion of cultural goods;**
  - III – training of qualified personnel to manage culture in its multiple dimensions;
  - **IV – democratization of access to cultural goods;**
  - **V – appreciation of the value of ethnic and regional diversity.**

# Copyright Law Actualization

## Actualizations due to Informational Society

**Informational Society is a complex and systemic communicative field.**

The obsolete self-centered mechanisms to protect, control and disseminate cultural goods were managed by oligarchs, representing an inadequate business model due to technological revolution.

**To actualize copyright law** into a new reality directed to individuals capable to simultaneously access intellectual goods, being instantly product by dynamic cultural industry

# Copyright Law Actualization

## Actualizations due to Informational Society

- The internet user must be capable to:
  - **Privately read, listen or visualize internet available content, even copyright protected;**
  - **Freely use the internet despite State boundaries and to create copies** in order to temporarily grant access
  - **To verify and experience commercialized copyright protected data**, regarding the fair-employment data, as long as preserving the original property.
  - **To create personal copies aiming to study, to learn or to research commercialized content.**

# Copyright Law Actualization

## Actualizations due to Informational Society

Cultural diversity issues regarding the Informational Society must encompass;

- To reduce cultural gaps regarding the access to cultural diversity, focusing on the internet limited availability
- To endure that uniformed and standard juridical positivism may limit cultural diversity patterns

# Copyright Law Actualization

## Actualizations due to Informational Society

A new copyright regulation must encompass:

- (i) The fundamental and constitutional right to cultural diversity and society development;
- (ii) Ethical values applicable to cultural diversity and society development
- (iii) The traditional international copyright legislation regarding cultural goods;
- (iv) The urgent reflection regarding cultural goods copyright in the informational society.

# Copyright Law Actualization

## Actualization due to the State

State absence on protecting and promoting copyrights, collaterally impairing public policies regarding cultural diversity

# Copyright Law Actualization

## Main Actualizations

The main actualizations may be divided as following

- a. **To improve legislation concepts** reducing regulations conflicts
- b. **To legislate new regulations** regarding unassisted issues
- c. **To ensure a contemporary legislation** encompassing the constitutional principles and the civil law, promoting balanced copyright laws



**GEDAI**

Grupo de Estudos de Direito Autoral e Industrial  
Universidade Federal do Paraná

**itm**

**Prof. Marcos Wachowicz**  
**[marcos.wachowicz@gmail.com](mailto:marcos.wachowicz@gmail.com)**  
**[www.gedai.com.br](http://www.gedai.com.br)**

