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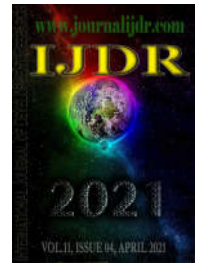
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RESEARCH ARTICLE

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COPYRIGHT: AN ANALYSIS OF THE CONVENTIONS AND THEIR IMPLICATIONS FOR COPYRIGHT PROTECTION IN BRAZIL

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ABSTRACT

This article presents an analysis of copyright throughout history, describes the course of the conventions and their constant updates through the rights of authors and those related to them. It also deals with Law No. 5,988/73 and Law No. 9,609/98 which, supported by the Berne Convention, describe the rules of protection of the author in Brazil. It also addresses the digital age and the challenges provided by the internet for copyright protection, presenting legal possibilities in the face of the challenges of cyberspace. It brings in its methodology the documentary research, by which the technique of documentary analysis was applied to investigate the conventions and the copyright law of Brazil. While the results showed that the Berne convention is a historical and structuring landmark for many countries today, its impacts are still reflected today on copyright laws, in Brazil the copyright protection system is based on the Berne convention. The internet presents major obstacles when it comes to copyright protection and, even though the European Union has developed the Marco Civil da internet, there are still loopholes in the protection of the author.

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INTRODUCTION

The digital age presented to the world, in general, a great variability of innovations and possibilities through the internet and the technologies of communication and information. Every day new ways of communicating, interacting, doing traditional activities, expressing opinions and having accessibility to other cultures appear (Menezes, 2020). Then came globalization, conceptualized and understood as the facilitation between countries to access and propagate culture, economy and technological advances. Here humanity found mechanisms, strategies and / or ways to share, mainly, information, inventions and innovations. In essence, globalization has generated "windows" between countries and continents (Carneiro, 2018). It is in this scenario of propagation of creation that the dissemination of intellectual property arises, where individuals seek through their intellect to explore the possibilities of the digital age and develop their potential through authorial recognition.

In order to acquire copyrights, it is necessary to meet a series of legal requirements and standards. In Brazil, copyright can be conceptualized as a set of prerogatives that the Law No. 9,609/98 guarantees to the creator of artistic, literary, scientific and original works. Through this law, the inventor and his successors can enjoy the results of his invention (Dal pizzol, 2018). In short, it can be said that the copyright consists in the recognition of the paternity of the work, in the relationship and eternal link between creator and creation, guaranteeing moral, patrimonial rights and economic exploitation of what was created, in addition to enabling family members to continue receiving credits after the death of the author (Cavalheiro, 2021). Therefore, when someone designs, builds and / or creates, they can request authorship of their construct, be recognized and valued for their creation, as well as profit tangibly and intangibly. It is through copyrights that inventors can receive the due credits for their intellectual production.

Before presenting the characteristics and application of copyright, an epistemological analysis of this segment will be carried out and how its legitimization process took place. Specifically in Rome and Greece, the first debates related to the authorial ownership of artistic works, plays and artistic expressions emerged. Encouraged by public contests and presentations, creators and inventors were acclaimed for their works, the valorization of these acts made them relevant and interesting, where intellectual property was given away for these purposes. However, it was in this same context that public opinion began to repudiate plagiarists, thus awakening the need to create rules that would punish and make it impossible for third parties to copy the works. However, it was only in the 15th century that there was a significant mobilization towards copyright protection. With the presence of printers and print, booksellers and publishers pressured authorities interested in the profits obtained from the works, and from there, to start a debate regarding copyright (Paranaguá, 2009).

In sequence, the 1710 statute of Anne, or the 1709 statute of Anne, is devised, which consists in the promulgation of the first written lines on copyright law. At the time, the statute decreed that authors were nominal beneficiaries, and was also responsible for wielding rights for a copyright or licensing of rights for fourteen years, as a possibility of extension to another fourteen. Another point to be highlighted is the copyright-viz which addressed an authorial monopoly on the work, aiming to stimulate authorial construction. It was through Anne's statute, that the authors won the right to request protection and guarantees on the moral and economic gains of their creations, being still a milestone for the protection of goods derived from intellectual property (Gómez-arostegui, 2010). Subsequently, another major advance in the trajectory of copyright was the Berne convention, where representatives from different countries met to systematize guidelines in virtue of rights. The Berne convention was a major milestone in the development of the copyright guidelines, it presented concrete follow-ups and matters regarding the material protection of authorship. Another peculiarity is that its matrices are still used as a basis in several countries, including Brazil (Caravina, 2020). This convention brought balance to the rights of the author, managed to internationalize protection rights vis-à-vis the signatory countries and used principles of intellectual property for the authorial protection of artistic and literary works (Fujita & Amorim, 2020).

Then, technological advances influenced and showed flaws in the guidelines that were in force. The Geneva convention or universal convention of copyright emerges, with the mission of internationalization of copyright, with the intention of attracting authors from other countries that had not accepted the Berne convention, and mainly to make relations with the States feasible. United States, a country notoriously known for acquiring cultural goods (Caravina, 2020). After this convention, there was the Rome convention, in which the main innovation of this agenda was the integration of the author's related rights, which protects and supports third parties involved in the construction of the work, such as a translator. Also in this convention, the world intellectual property organization brings three inserted rights, which are performers, phonogram products and broadcasting organizations (Mariot, 2020). Soon afterwards, the Brussels convention took place, where the moral protection of the author's rights had been placed on the agenda, in addition to the discussion of the duration of protection, and it was defined that the author would enjoy his rights during his life and protection for 50 years after -death (Zanini, 2011). After the Brussels convention, another debate was held in Stockholm, aiming to establish that the countries linked to the Berne convention had a parameter for the protection of moral rights, which would be in force until the end or extinction of patrimonial rights. In this, it was open that some rights would be withdrawn with the death of the author. Finally, the convention of Paris, which brings as a landmark the law, normative or even collective treaty. Notoriously known for having the intention to give legitimacy to states as legislators. Through this convention came the international unions that established intellectual property rights, where subsequently gave rise to International Organizations, also creating a Bureau of the Union of Paris (general secretary) with the purpose of sedimenting administrative activities

(Wachowicz & Medeiros, 2008). It is worth mentioning that the Paris (1883) and Berne (1886) Conventions were fundamental for the creation of the International System for the Protection of Intellectual Property, emphasizing the creation of the concept of public domain, enabling deadlines and consents so that after the end of the rights over an intellectual property any person can use the work without consent or authorization (Wachowicz, 2011). Today the World Intellectual Property Organization holds the main discussions that permeate the universe of copyright. The conventions presented until now are understood as a landmark in the evolutionary process of copyright protection, the purpose up to that moment was to know the statutes, conventions and changes on the rights of the author. Below is a graph that illustrates what we consider the main elements in the relations of ownership and copyright protection, presenting the years, countries and conventions on a historic and gradual scale.

Scientific Problem: Over time, humanity has learned to value the artistic, literary and scientific works of the human intellect. Therefore, in its history, man has researched, discussed and developed guidelines to ensure the protection of copyright. In this context, countless people are valued for their inventions and creations, so this study raises the following question: How did the development process of copyright in Brazil and in the world take place? The main objective is to interpret the current legislation on copyright, conventions and applicability in Brazil, analyzing the historical process through the laws and guidelines on copyright in Brazil and in the world; reflecting on the impacts of the Berne Convention on copyright in Brazil and knowing the changes brought by the digital age in copyright. This study presents the following elements in its construction, initially it was necessary to apply the document analysis technique in the statute of Anne, Paris Convention, Berne Convention, Geneva Convention, Rome Convention, Brussels Convention, Stockholm Convention, Law No. 5,988 /73 and Copyright Law No. 9,609/98. Then, the data were grouped and presented in graphs and concept maps. Based on the cut and qualitative analysis. Then, applying the principles of bibliographic review, the impacts of the digital age on copyright were analyzed, with emphasis on the Marco Civil da internet and the Creative Commons license.

Copyright in Brazil: Historically, Brazil expressed interest in the field of copyright in 1883, being a signatory country to the Paris convention, initially through industrial law and later, actively, in the field of copyright protection (Canalli, 2011). Legally, the law No. 5,988/73 and its successor (Law No. 9,610/98) of February 1998 can be highlighted. In the law No.5,988/73, the author's rights and related rights were regulated, addressing in its first chapter the protection of intellectual works, specifying concepts and defining some works, such as books, brochures, leaflets and among others; in its second chapter it brought the characteristics to configure the author, or authorship of intellectual works; in its third, it describes the ways and organs for the registration of intellectual works; next we have the guidelines for moral and patrimonial rights, presenting their duration; and another item addressed concerns the limitations of the author and the assignment of author's rights. In Title IV, the Law No. 5,988/73 addresses the use of intellectual works, initially presenting the elements for editing the works, soon after the representation and execution. Then, in sequence, we have the rules for regulating the use of artistic work, photographic work, phonogram work, cinematographic work, work published in newspapers or periodicals and finally works belonging to the public domain. In Title V of this Law, we have the related rights, of the performers and the phonogram producers, as well as the rights of the broadcasters, the arena and the duration of the related rights. In its final promulgations, the Law No. 5,988/73 systematizes the association of copyright holders and those related to it, the national copyright council, sanctions and the violation of copyright and those related to it, civil and administrative sanctions and ending with the prescription criteria and the final and transitory provisions that deal with the executive branch (Brasil, 1973). In the figure 1 is a concept map showing the organization chart of law No. 5,988/73, in more detail. In short, Law No. 5,988/73 was a landmark of great relevance for the advances of copyright in Brazil.

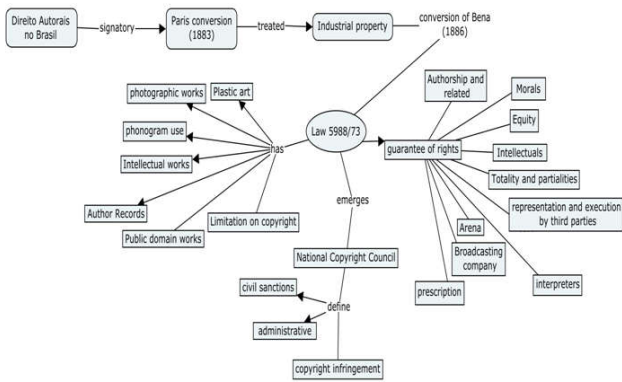


Figure 1. Conceptual map copyright in Brazil Law No. 5,988 / 73

Supported and based on some principles of the Bern convention, it was possible to direct the rules and guidelines on the subject in the country and also to guide artists, authors, interpreters and interested parties. Divided into 134 articles and nine titles, this law was a great achievement for the authors of Brazil and mainly a watershed in terms of protecting the rights of the author (Chaves, 1978). It was based on the aforementioned law as the basis for discussions and the enactment of a new law No. 9,610/98, which today is the basis for the regulation of copyright in Brazil, bringing 115 articles in its description, of which practically 89 are reproductions from its predecessor, Law No. 5,988/73, having as innovation the following elements: extinction of the National Copyright Council, the insertion of computer programs as works subject to protection in the sphere of copyright. It is worth emphasizing here that the new law presents works that are not protected by copyright, an innovative element compared to the previous one, it also brings a series of conducts that are directed to third parties, referring to how to use some works without authorization or author's consent. Another innovation segment was the standardization and exposure of the deadlines that are in force over the beginning and end of the term of the author's right to its creation (Damasceno, 2006). In a way, the predecessor law was basically copied to a large extent, its relevance to copyright is significant until today, the innovations addressed by its successor illustrate and accompany the history of copyright in the world and the evolution of humanity. In the figure 2 specifying the titles and chapters of Law No. 9,610/98.

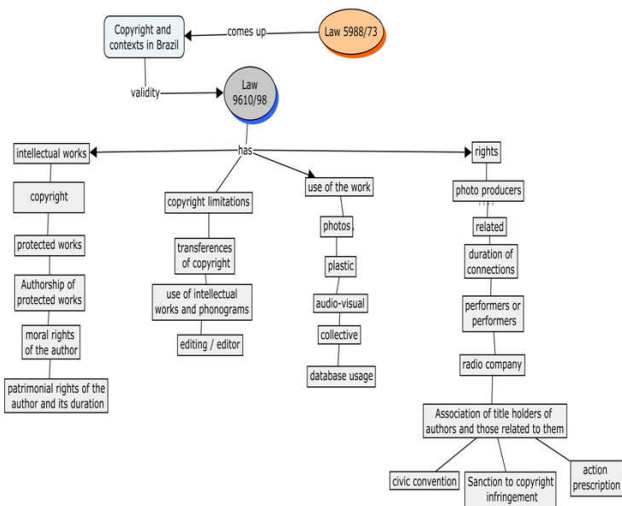


Figure 2 Conceptual map Copyright in Brazil Law No. 9,610 / 98

In short, the various social problems imply the constant need to update the rules and laws in the face of combating the ills that plague the authors, such as piracy and plagiarism, for example. Having regulated and consolidated the protection culture is a big step towards protection and encouragement for advances and innovations in the country. For, being valued and assured of your rights is fundamental for creation and innovation.

In Brazil, there are a series of rules and laws that regulate follow-up and matters related to copyright, presented in the figure 3 showing the laws and their delineations and their measures. Despite the evolution, with regard to copyright in Brazil, there is still a need for more specific and specific laws regarding the new demands that emerge (Da Silva & Kraemer, 2008). Figure 3 presents the main laws and decrees that guide and protect the rights of authors in Brazil, it is worth emphasizing Law No. 5,988/73 and Law No. 9,610/98 that deal directly with copyright protection in Brazil. Then, it will be time to know the implications of the digital age in the formatting of copyrights, a topic that will be discussed in the next section.

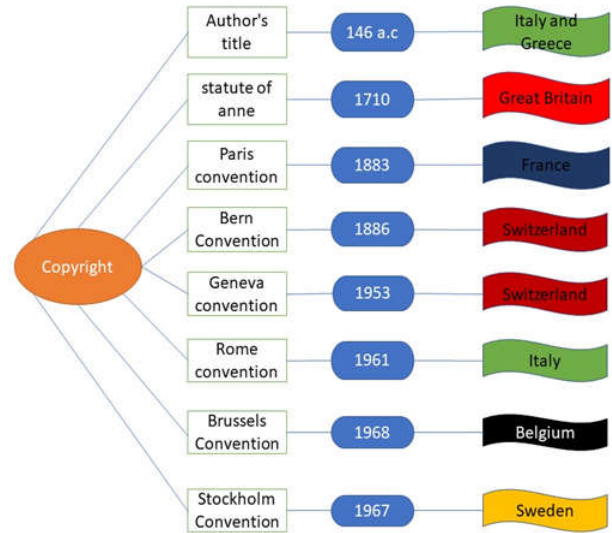


Figure 3. Copyright trajectory

Copyright in the digital age: The digital age, in its essence, has provided countless impacts on today's society, on communication, interaction, work and access to information, perhaps these were the most relevant changes in contemporary times, thinking about the social community in general. The digital age can be understood as the information age or the technology era, also directly related to the industrial revolution 3.0, spread at the end of the 20th century, basically reflected in the transformations brought about by the electronic and technological sector in the current form of work. Then there is the 4.0 revolution, which is responsible for the current moment, lived in the digital dimensions, provided by the screens of smartphones, computers, tablets, among others. The impacts on social behavior were so significant that today cell phones are a work tool, with professions emerging as digital influencers (Haubenthal & Führ, 2019). Therefore, it is in this perspective that it is necessary to reflect on the limitations of copyright in the digital scenario, to understand how protection occurs in this context. The growing social transformations have always been motivated by the constant incentives that come to man's inventive capacity. In general, people have always coveted technological innovations, simply because of their advantages and applications in different objectives and purposes. And in the digital age it could not be different, the transformations of atoms in bits, the impacts of the internet, the digital world and the information society present great challenges in terms of protection (Santos, 2008). For questions about how to protect yourself in the digital context are constantly raised in agendas and discussions. Thus, understanding how copyright protects works in this perspective is fundamental. The transformations provided by the internet are major obstacles to the protection of copyright, currently based on the Berne convention, and treaties by the world intellectual property organization have difficulties in acting in the digital scenario. Because, with the possibility of disseminating information from the internet, any creation can be viewed by thousands, making the protection and guarantees of the author unfeasible or difficult. Thus, there is a need for more current and tougher standards in the fight against the misuse of inventions. Presenting major problems for copyright, it was necessary to recreate or update the rules, and in

2019 the parliament of the European Union approved new rules for the digital space (Silva & Silva, 2020). Called the Marco Civil da internet, the author's right in this sphere is based on five principles, which are:

“Principles of freedom of expression, communication and expression of thought, protection of privacy and personal data, neutrality of the network together with its stability, security and good functioning according to good technological practices, accountability of agents for their behavior on the network without prejudice preserving the participatory nature of the network and fifth the freedom of business models promoted on the Internet, that is, freedom of access to the digital market” (Pereira, p. 4, 2016).

Through its principles and objectives, the Marco Civil da internet presents emerging solutions for cyberspaces, determines rules and defines punishments for the violation of copyright on the internet, becoming a great document in times of propagation and mass accessibility of information. Another mechanism for protecting digital space is through Creative Commons, or public license, in which the author can have his work propagated and disseminated in previously defined and authorized spaces, without losing his rights and title, in addition to disseminating his creation. In this way, the author is able to monitor the dissemination spaces and follow the results of his work (Lemos & Júnior, 2006). The digital age presents a series of challenges to copyright, therefore, updating and creating new protection strategies are fundamental actions in times when it is common to understand the internet as "no man's land", popular jargon. Therefore, competent authorities and bodies need to intensify their attention in this perspective and ensure the steady and gradual evolution of humanity's innovations and creations, valuing their authors, inventors and creators.

Final Considerations

Copyrights are norms, laws, frameworks and defense strategies against piracy, plagiarism and violation of the rights of authors and their related ones. Over time, numerous conventions, meetings, debates and discussions were drawn up with the purpose of encouraging and valuing the authors, creating norms and rules for this. The Berne Convention represents a major milestone in the history of copyright, being used as a reference in contemporary times and in several countries. In Brazil, copyright is protected by Law No. 9,609/98 that is in force protecting authors, publishers, products and innovations. Its systematization took place by Law No. 5,988/73, which was the first major step in Brazil for the protection of copyright. They are referenced by the Berne convention. The digital landscape presents several challenges for the laws in the protection of copyright. In terms of the problems caused by the digital universe, the European Union has developed strategies and frameworks for the protection of authors in the world of the internet, with the Marco Civil da internet and licenses as possible ways of protection. The advances in copyright over time are indisputable, the valorization of authors and their works are the purposes of these instruments. However, humanity's inventive capacity challenges at all times what was thought and created as protection and law in history, demanding and mobilizing authorities and bodies to develop new protection strategies. Finally, copyright is a legacy of humanity, its presence is fundamental to protect and guarantee the rights of authors, being it a driving force in the tangent that is society.

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