

Meaning of Law 9.610/98 Based on Grounded Theory

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ABSTRACT

The Law implies both the intentionality of its writing, because it is always the result of the need to discipline activities or behaviors, as well as in the interpretation given to it. So why not interpret the Law with a coded analysis? The purpose of this study is to make an analysis of the Law 9.610 of the Rights of the Author using methodology of Grounded Theory. This is a documentary base study, using the Grounded Theory described by Allan (2003) and at the end formulated the theory of understanding its intentionality. Law 9.610 / 98 tells us that every work has value and that it is a right of the author to protect this value (already existing in the work) so that it can be shared with the others. These have the right to enjoy the production of others because it is not valid to call something 'work' and leave it hidden. In this case it would not be a work but a learning exercise.

Keywords - Legislation; Data Interpretation; Information Theory

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I. INTRODUCTION

The University as a field of development of technologies and knowledge is a field full of challenges and opportunities. Frezatti (2018) suggests that the high point of university performance is measured by the public recognition given to the researchers. The merit would be in discovery, identification or creation resulting in great honor for a researcher.

But being a researcher denotes other skills that are inherent to him by denomination. There is a responsibility to master scientific communication rules (Munhoz & Diniz 2011). Violating these rules would cast doubt on the researcher's ability and would nullify any credibility presupposed by his already accomplished works.

On the other hand, the regulating bodies of educational activities, always alert for possible slips of researchers, provide protection through the creation of laws. In 1998, Law 9,610 was enacted, which amends, updates and consolidates copyright legislation (Brasil, 1998). This Law has been the master guide for understanding and directing scientific and technological production within Universities, both to protect productions and avoid users of the producing provided for in the Law.

However, a Law implies both the intentionality of its writing, because it is always the result of the need to discipline activities or

behaviors, as well as in the interpretation given to it. In short, a Law follows the same logic as a work of art: it does not always matter the message sent by the artist as much as the message received by the admirer. Under a legal analysis, Ataliba (1968, pp. 109-110) warns that "in short, what matters to the hermeneutics is the will of the law and not of the legislator. And the will of the law is in its text, interpreted systematically, in harmony with the unitary whole formed by the legal system".

So why not interpret the Law with a coded analysis? Allan (2003) demonstrates that data or code-based theory is a form of content analysis to find and conceptualize the underlying problems of data 'noise'. To answer this question, the objective of this study is to make an analysis of the Law 9.610 of the Rights of the Author using the methodology Grounded Theory or Data Theory.

II. METHODOLOGY

This is a documentary study. Law 9.610 is analyzed using the Grounded Theory described by Allan (2003) and formulated at the end the theory of understanding the intentionality of the Law. Key words associated with the expected actions of the Law were chosen and compared in their frequency of appearance. The data was revised to identify ideas, concepts or repeated elements that became apparent and were tagged. The codes were grouped

into concepts and then into categories. These became the basis for the new theory.

The key words used were 'Proteção' [Protection], 'Protegidas' [Protected], 'Protegem' [Protect], 'Contrafação' [Counterfeit], 'Contrafator(es)' [Counterfactor(s)], 'Autor' [Author], 'Direito(s)' [Right], 'Dever(es)' [Duty(s)], 'Obra(s)' [Work], 'Usuário(s)' [User(s)], 'Valor(es)' [Value(s)], 'Titular(es)' [Holder], 'Registro(s)' [Register(s)], 'Registrar(do)' [Register], 'Utilização' [Use] and 'Utilizado(a)' [Used]. Posteriorly the words were presented and codified according to their meanings, comparing their frequencies to formulate the Theory of Intentionality of the Law.

III. RESULTS AND DISCUSSION

The data collected from the chosen key words indicate a variation of up to 200% between the most frequent and the least frequent ones. In Figure 1 it is observed that the word 'Work' is the most frequent with 199 appearances, followed by 'Law (s)' with 133 appearances. If it is considered that 'Rights of the Author' is indicated in the description of intentionality of the Law, it is perceived that the 'Work' assumes greater importance.

Figure 1. Frequency of the appearance of key words in Law 9.610 / 98

It is true that this would be a dictionary definition (Finatto, 2002), because 'work' could be related within the scope of the Law with many other expressions, however, its incidence shows some indicatives that are of interest in the formulation of this theory, even lacking validation (Leal, Bastos, Rodrigues, Pires, Carvalho, & Cubas, 2017).

The frequency of the words presented in figure 1 reinforce superficial understandings that the Law refers to the author's rights. For this, the citation of the work and the various works that can be protected confirm the initial expectations. When comparing the frequencies of the words 'work' and 'value (s)' it is observed that there is a very large distance, since 'value (s)' appears 25 times (figure 2).
Figure 2 - Frequency of the words Work and Value (s)

Value is associated with a work that one has an interest in protecting. It protects the value of the work and not the work as an isolated product. The valuation of a work is inevitable (Avelar, 2017) and has been going on for a long time. You can not disassociate one from another.

Value can also be considered an affective experience of the analyst or user with the work (Lima, 2009). Thus, it would not be wrong to understand that the Law understands that value is implicit in the word work, and it is unnecessary to devote so much space to it.

In any case, Legislators can not always transcribe their intentions in their legislative texts. In fact, they may succeed, but the later interpretation is who dictates the outlines of the Law and often misrepresents the real intentions of writing.

When analyzing the frequency of the words 'right' and 'duty' it is observed in figure 3 that there is a very great distance. There are 133 appearances of law and only 2 of duty (s). This difference seems to be indicative of the intentionality of the Legislators. The concern with the right presupposes that it will give greater value or support to the author of the work than in his attributions after the making of the work.

Figure 3 - Frequency of the words Right (s) and Duty (s)

In a more refined analysis, taking for example a scientific article written by a researcher, it would be possible to suggest that the care with the duties of the researcher would already be sufficiently adopted for the execution of the research, as for example in ethical care, duly explained in Person, Coimbra and Koller (2017). Once the research is completed, it is assumed that the work was 'born' and needs to be taken care of in the form of the rights of its executor. Therefore, the right overrides the duties of the author.

Based on the rights, the frequency of the words Author, Titular (s) and User (s) was analyzed, considering that the author and owner, although not necessarily the same figure, are in the form of 'owners' of the work. The user is the one of contemplates, uses, manipulates the work, being a figure of counterpoint in relation to the first ones

In figure 4 it is observed that added author and titular are 105 apparitions and contrasts with user (s) with 15 apparitions. This indication denotes a sense of the Law that may cause concern if the possible damages that the work may cause in the user, such as alteration of concepts, are analyzed (SCARAMUCCI, 2018).

Figure 4 - Frequency of words Author, Tirulares and user (s)

The relationship between author and user can be very damaging because there is an evident loss of control of the creator in relation to his creature (Herrero, Rey, & Fariña, 2017), resulting in new commitments to be observed by legislators to his own work. While directing efforts with a skewed, camouflaged stare, it fails to protect all actors involved in a play. The function of the Law is to anticipate this, optimizing essays to avoid the need to rewrite the same Laws or duplicate themselves Related laws for lack of a broad view of the topics mentioned.

Figure 5 shows the frequencies of words related to the use of protected works and misuse in the Law called 'counterfeiting'. It is evident that the

Law does not pay much attention to the possible inadequate uses, to the punishment but to the use of the works. Indicating how the work can and should be used, it seems clear that the Legislator inserted in the Law the notion of protection, giving a positive orientation on how to make the works reach the user to which they are or are destined. From this perspective, it is evident that the user has the right to have access to the work. The author and / or owner has the right to have his work reproduced or used by its recipient.

Figure 5 - Frequency of words Use, Used, Counterfactor (s) and Counterfeit

In a somewhat romantic view, it would be possible to affirm that if a work can not be enjoyed it does not deserve to be done. Frederico, Mollo and Dutra (2017) already indicate that writing is an act of life and, thus, it is worth sharing, otherwise it will deny the user the privilege of having contact with life. From the scientific point of view, the starting point of this study, Munhoz and Diniz (2011) affirm that the student is someone who learns the rules of scientific writing and should follow these rules. In the academic disciplines which are part of the curricula of their courses, they are charged for writing texts that will be limited to the subjects.

The publication or sharing of these texts would be a different step, another level. Academic training is the initial goal rather than the dissemination of content, as it meets a demand for professional training. Academic activity, regardless of form, is mobilized around the search for solutions to the problems of the areas of activity, which derive from new knowledge in some dimension (Frezatti, 2018). The sharing of the works produced gives a degree of differentiation of their respective producers who are called authors or researchers.

The interpretation of the Law must also be associated with the evaluation niche to which it is intended. The messages identified in the frequency of appearance of the words can be responsible for different and modern interpretations of intentionality, now no longer of the Legislators, but of the Law as it is written.

IV. FINAL CONSIDERATIONS

After analyzing the Law 9.610 / 98 that deals with the Rights of the author, extracted the keywords related to the intent of the research, grouped in meanings and compared between them, it is possible to formulate some propositions on the intentionality of the Law. It can not be considered that the Law expresses exactly the intention of the Legislators, but rather that it gives us a line of conduct, directing to the understanding of how to treat the Rights of the author.

Thus, the proposed theory of intentionality of Law 9.610 / 98 follows the following premises:

- 1 The Law is concerned with the Protection of Rights of use of the Work and the Author;
- 2 The Law grants less importance of Value to the Work and the misuse and / or intention of the Works or the duties of the Author;
- 3 The law protects rather than adding value because value is implicit and inherent in the protected work.

In summary, Law 9.610 / 98 tells us that every work has value and that it is a right of the author to protect this value (already existing in the work) so that it can be shared with the others. These have the right to enjoy the production of others because it is not valid to call something 'work' and leave it hidden. In this case it would not be a work but a learning exercise.

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