

INTELLECTUAL PROPERTY IN THE PERFORMANCE OF PHYSICAL EDUCATION PROFESSIONALS: CHARACTERIZING ELEMENTS FOR COPYRIGHT PROTECTION

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Abstract

In essence, man stands out for the use of your intellect to overcome his challenges and remain in constant evolution. Throughout its history, mankind has developed laws, rules and criteria to protect inventions and innovations. Along the way, a copyright law was created that supports and protects works and products from human intellect. Through it, it is possible to stimulate and leverage diverse sectors and professionals. Based on this, this study aims to characterize the prescriptions of physical activities, therapy, prophylaxis and their relationship with copyright. Its methodology is Grounded Theory, or theory based on data analysis and analysis of the legislation of the professional exercise of Physical Education (CONFEE). As preliminary results, it was identified that there are elements that allow the authorial protection of the training sections, in the prescription of prophylactic and therapeutic activities because they present characteristics of intellectual property and the Physical Education professional, in their functions and attributions, demand innovations and inventions customization of training sections.

Keywords: Intellectual property, Technological Production, Copyright.

Contextualization

Historically, man uses your intellectual capital to solve problems, whether individual or social. Since its emergence, humanity manipulates and develops materials that facilitate and contribute to its progress. Through inventions and innovations it was possible to “control” the fire, create tools, build houses, explore the depths of the oceans and even reach space (Silveira, 2014). The intellectual production is vast and it would hardly be possible to present all the products built and used by man here, nor does it give due credit and values to its authors. It is from this premise that intellectual property arises that can be understood as:

The WIPO Convention defines as Intellectual Property, the sum of the rights relating to literary, artistic and scientific works, to the interpretations of the performers and to the performances of the performing artists, to phonograms and broadcasting broadcasts, to inventions in all fields of activity human rights,

scientific discoveries, industrial designs and models, industrial, commercial and service brands, as well as commercial firms and trade names, protection against unfair competition and all other rights inherent to intellectual activity in the industrial, scientific domains, literary and artistic (Barbosa, 2003, p. 10).

It is through the laws present in intellectual property that it is possible to protect and make those who invent or innovate have their rights met. Within this system of norms is industrial property and in Brazil, in 1996, Law 9.279 / 96 was passed, which regulates and credits the inventions and innovations produced by the human intellect. Therefore, artistic works, architectural projects, industrial designs, utility models, are some of the constructs that can be protected (Speziali; Galdino, 2019).

In the present study, the copyright law stands out, which by means of Law No. 9,610 / 98, protects and safeguards the rights prior to the creation of prints, architectural, scientific, artistic, literary projects, among others; and just as it is possible to protect an architectural project, the protection of a training section is advocated here.

Still, Law 9,610 / 98 defends that the author has his rights over his creation, whose author is the one who creates the intellectual work and develops it. For this protection, registration and art. 18 of Law No. 9,610 / 98 establishes that the author must identify that he is going to request protection from the National Library or National Institute of Intellectual Property and asks for protection.

In the scope of copyright, there is a clear intention of intellectual protection and valuing the inventor or creator, and it is through this intentionality that the Physical Education professional stands out. It is understood that, during a training period, the Physical Education professional demands intellectual capital, as he needs each client to personalize and elaborate training sessions specific to the needs of each practitioner. Thus, each physical evaluation requires the need to change the training sector, leaving the professional with a new demand for the planning and construction of the sector.

Scientific Problem

It is within this specificity that we seek to answer the following question: do the prescriptions for physical activities, whether prophylactic or therapeutic, have characteristics of the work provided for in the legislation that protects the author's rights?

Objective

To characterize the prescriptions of physical activities, therapy, prophylaxis and their relationship with copyright.

Methodology

To search for information, Grounded Theory, or theory based on data analysis, was applied. Initially, it was necessary to carry out an analysis of the legislation of the professional exercise of Physical Education (CONFEEF). At this point, the laws and resolutions that presented the characteristics of the performance of

the professional in Physical Education were sought. It was also necessary to carry out a search in the literature.

It was used the recurse of broader literature at <https://scholar.google.com/schhp?hl=en-US> to identify understandings about prophylactic activity and therapists in physical activity and training methods. Primarily, the following keywords were used: 'Training method', 'prophylactics', 'therapies' and 'physical activity'. Then, the grouping of information, according to the relations on characteristics and conceptual description of the training methods, characterization of prophylactic and therapeutic activities.

Copyright

Imagine the following situation: some one spend days, months, or even years planning, structuring, building, studying and producing something that has an impact and tangible or intangible value, such as a play, article, book, film, music, melody, expressions artistic, plastic arts, architectural design, scientific article, for example. After countless hours searching for an identity to their product and making it tangible, someone simply decides to reproduce their object that demanded so much intellectual and even material investment, worse than that, these people are able to profit, to have advantages over their work. What would be reaction? What if that person wasn't punished? Or if there were no means to establish protection for your invention or innovation? How did you feel about creating new products? Through this perspective, the relevance of copyright is feasible, not only as protection, but seen as an incentive for the growth of intellectual capital in several segments and, mainly, significant and necessary for the continuity of intellectual production. Therefore, during this study, we will seek to discuss how copyright can be used in the performance of the Physical Education professional, mainly on the demand for planning and structuring the training sections.

Copyright in Brazil is based on Law 9,610 / 98, of February 19, 1998, this law defines the author as:

[...] being a natural person who creates a literary, artistic or scientific work, portraying the very personal character provided by the Constitution, through articles 11, 22, 24, 27, 28, 29 and 30. According to the law, the author and the work are closely linked , therefore, the holder's right is exclusively associated with his person (WINDSOR, 2020, p. 28).

In article VII, we have the definition and characterization of the passive protection elements in the copyright law. Specifically, in item X, there is talk about the protection of projects, sketches and plastic works while subject to protection. Therefore, when a Physical Education professional develops a training program or periodization, whether for prophylactic or therapeutic purposes, it is understood and defended here the insertion of protection through law 9.610 / 98.

It becomes cliché to state, in the 21st century, that systematic and regular physical activity presents significant data in its practitioners when it comes to prevention and maintenance of health status. The regular practice of physical activity, in addition to causing changes in the health status of practitioners, has been defended in numerous studies as fundamental for an improvement in the framework of public health

in general. Discussing the benefits of physical activity is not the intention of this study, there are many studies proving such data, the purpose here is to think about the valorization of professionals who plan, elaborate and systematize the training sections and programs, defend and reflect on the need for protection of this intellectual good.

The regular practice of physical activity has been defended and vehemently proven as an effective means of preventing and maintaining the practitioner's health status. It is possible to associate this phenomenon with countless benefits in different segments, such as: anthropometric, metabolic, cognitive and psychosocial effects, falls, risk of injury and therapy, in addition to being associated with quality in mental health today (Matsudo, 2009). However, it should be noted that the absence of periodization or a well-defined and specifically designed section, too, can be associated with risks, injuries and even death (Pinheiro, et al, 2017). Further justifying the need for and valuing the presence of Physical Education professionals in the public health sector.

When we think about physical activity, we inevitably condition it to prophylaxis, as studies such as Santos et al, (2020), Barbosa, (2020), Mileo & Carvalho, (2020), Tozo, (2020), Campos, (2020) by Carvalho et al (2020), present relevant and significant data regarding the regular practice of physical activity, systematizes its impacts in the prevention of numerous diseases and population groups such as the elderly, pregnant women, special groups, obese people, heart disease and cancer prevention.

In the sphere of therapeutic physical activity, we can think of actions related to the treatment of mental illnesses and disorders, such as depression, isolation and mental disorder, aiming at the rehabilitation of health status (Lourenço et al, 2017). This activity model has been presenting significant data on the readaptation and conditioning of patients with conditions related to depression, points out Mendes, et al, (2020). Therefore, it is possible to substantiate and support the theory of relevance and meaning of the Physical Education professional in health and society.

Physical activity prescription

Knowing which model to follow, methods to use, structuring the load, volume, intensity, schedule, identifying the variations, perceiving the changes provided by the activities and exercises, are some of the attributions in the process of systematizing the training and prescription of physical activity of a professional in Physical Education (Dantas et al, 2011). Thinking and systematizing all paths towards the practitioner's goals is an intellectual task and requires conceptual and specific domains when setting up the entire process (figure 1). Therefore, the following reflection would fit here: Do Physical Education professionals carry out intellectual actions inherent to copyright protection? Could its function be based on the thinking of prescription?

Figure 1 - Types of models used in physical training.

| Author | Model | Characteristics | Goal |
|---------|-----------------------------|---|--|
| Matveev | Classic / Traditional Model | General adaptation syndrome, undulating load variation, | Physical preparation, improvement of technical skills, VO ² , |

| | | | |
|---------------|----------------------------------|--|--|
| | | preparation period, competition period and transition period. | peak and performance. |
| Verkhoshanski | Block Model (Concentrated Loads) | Programming, organization, control. | Load individualities, load concentration, capacity developments and specific work. |
| Gomes | Selective Load Model | Double periodization lasting 26 weeks for each macrocycle and improvement of speed capabilities. | The improvement of movement speed. |
| Bondarchuk | Integrating model | Development, maintenance and rest . | Performance and performance. |

Source: (Dantas, et al, 2017)

Regulation of the Physical Education professional

Through organic law no. 8080/90 physical activity is seen as a determining and conditioning factor of health. With this achievement, the physical education professional starts to occupy and conquer other spaces of performance (Lotti; Nakamura, 2020). Today, there are Physical Education professionals in various health segments such as Family Health Support Center (Nasf), Psychosocial Care Centers (Caps), primary health care, secondary care and tertiary care (Júnior, et al, 2017). In addition to spaces in the sports, educational, leisure and recreation spheres, among others. Therefore, with the occupation of new spaces, new competences and skills emerge. Therefore, greater demand for applied knowledge.

Figure 2 shows three laws that specify the variations of knowledge inherent to the professional practice in Physical Education. In it we have attributions aimed at promotion, protection, recovery, organization, prevention, rehabilitation through physical activity for health. Thus, the relevance of the Physical Education professional is factual, whether in prophylactic or therapeutic actions.

Figure 2- Role of the professional in Physical Education

| | |
|------------------|---|
| Law nº 8080/1990 | Provides for health actions aimed at health promotion, protection and recovery, the organization and functioning of the corresponding services. |
| Law nº 9696/1998 | The area of physical activity and health serves the purposes of health promotion, prevention, protection and rehabilitation, through physical exercise and physical activity, constituting the intervention area of the Physical Education Professional and submitting to technical and ethical control professional. |

Law nº 12864 Changes the caput of art. 3 of Law 8,080, including physical activity as a determining and conditioning factor of health.

Source: (CONFEEF, 2021).

The laws presented in table 1 bring in its core that the Physical Education professional have to evaluate, collect data, apply and interpret laboratory tests, physical evaluation protocols, to know, plan, apply psychomotor methods and prescribe according to the client / patient specificity and need. Due to these variations in their function, the need for intellectual application for the construction and prescription of the activity is highlighted, since, in this way, the professional involved must customize and elaborate the training section according to the clinical requirement or objective of the practice. It is in this perspective that the possibility of copyright protection exists, taking into account that there is, in this element, the use of intellectual property.

Figure 3 shows the resolutions that foster and highlight the attributions and conceptual and technical competences of the physical education professional, here you can see the legal fields of action. The professional can perform his / her role in hospital contexts and provides other measures, water aerobics, cardiovascular area, psychomotricity, water sports, physical evaluation, sports / physical training, sports gymnastics, labor gymnastics, Exercise biomechanics and other measures, resistance training and weight training. Physiology of Exercise and Sport, family health, mental health, collective health, *pilates* and acupuncture. It is perceived that it is a vast area and with a high degree of knowledge, highlighting the importance of institutions in structuring and promoting the practice of this professional (FIGUEIREDO, et al, 2020).

However, the focus here is to draw attention to the intellectual employment required for each practice of this. It is undeniable the variability of each activity, the objectives of clients or students, all of these elements culminate in the development of new sections and more intellectuality. Perhaps there is a need to rethink the valorization of the Physical Education professional, and to focus on intellectual property.

Figure 3 - Areas of activity of the professional in Physical Education

| RESOLUTION | POWERS AND COMPETENCES |
|---------------------|--|
| CONFEEF nº 391/2020 | Recognition and definition of the performance and skills of the Physical Education Professional in hospital contexts and other measures. |
| CONFEEF nº 387/2020 | Provides for Professional Specialty in Physical Education in the area of Water Aerobics. |
| CONFEEF nº 386/2020 | Provides for Professional Specialty in Physical Education in the Cardiovascular area. |
| CONFEEF nº 375/2018 | Provides for Professional Specialty in Physical Education in the area of Psychomotricity. |
| CONFEEF nº 342/2017 | Provides for the Professional specialty in Physical Education in Water Sports. |

| | |
|--------------------|--|
| CONFEF n° 328/2016 | Provides for Professional Specialty in Physical Education in the area of Physical Assessment. |
| CONFEF n° 327/16 | Provides for Professional Specialty in Physical Education in the area of Sports / Physical Training. |
| CONFEF n° 326/16 | Provides for Professional Specialty in Physical Education in the area of Sport. |
| CONFEF n° 324/16 | Provides for Professional Specialty in Physical Education in the area of Sports Gymnastics. |
| CONFEF n° 323/16 | Provides for Professional Specialty in Physical Education in the area of Labor Gymnastics |
| CONFEF n° 322/16 | Provides for Professional Specialty in Physical Education in the area of Exercise Biomechanics and provides other measures. |
| CONFEF n° 312/15 | Provides for Professional Specialty in Physical Education in the area of Resistance Training / Bodybuilding |
| CONFEF n° 262/13 | Provides for Professional Specialty in Physical Education in the area of Physiology of Exercise and Sport. |
| CONFEF n° 255/13 | Provides for Professional Specialties in Physical Education |
| CONFEF n° 232/12 | Provides for Professional Specialty in School Physical Education |
| CONFEF n° 231/12 | Provides re Professional Specialty in Physical Education in the Family Health Area |
| CONFEF n° 230/12 | Provides for Professional Specialty in Physical Education in the area of Mental Health |
| CONFEF n° 229/12 | Provides for Professional Specialty in Physical Education in the area of Public Health |
| CONFEF n° 201/10 | Provides for Pilates as a modality and method of gymnastics and provides other measures |
| CONFEF n° 069/03 | Provides for the use of acupuncture technique by the Physical Education Professional, when his intervention |
| CONFEF n° 046/02 | Provides for the Intervention of the Physical Education Professional and respective competences and defines their fields of professional performance |

Source: (CONFEF, 2021).

It is the responsibility of the Physical Education Professional to understand physiological functioning and functional conditioning; conditioning and physical performance; mental well-being and health; provide consulting, advisory and auditing services in its professional specialty; develop research, scientific and technological research in its specialty; and prepare technical manuals and guidance standards in their professional specialty (...) prepare technical manuals, reports and guidance standards in their

professional specialty, develop research, scientific and technological research in their specialty; (deliberation, CONFEEF, May 8, 2020).

Based on the functions and attributions mentioned above, the relationship between the performance of the Physical Education professional, intellectual property and author's rights is noticeable. For, Law No. 9,610 / 98, in its description, shows that works produced by the intellect, created and / or invented, are subject to protection. Still in art. 7th item XI, we have that other works that in their configuration, organization or creation come from intellectual property.

Therefore, there are elements that configure and enable the authorial protection of training sections, whether prophylactic or therapeutic. When creating a training cycle or prescription, the Physical Education professional demands intellectual capital, needing to customize the entire prescription according to the needs and objectives of the applicant.

Conclusion

The Physical Education professional is inserted in several social segments. Its attributions permeate aspects of health, training, leisure, recreation, sports and school, and may vary in therapeutic or prophylactic elements. In its regulation there is a need to develop some technical, conceptual, procedural and attitudinal skills and abilities. The professional in this area needs to elaborate, create, develop, prescribe and guide body actions for different purposes and objectives, demanding from him intellectual property.

In the copyright law there are elements that make it possible to protect the training sections, since, in the systematization and elaboration of the training section, the Physical Education professional needs to create, elaborate and develop motor actions directed to the specifics of the client / student / athlete / patient.

The data presented here are preliminary, being the initial path of a thesis that aims to substantiate and enable authorial protection against the performance of Physical Education professionals, impacting their professional practice, seeking to enhance the intellectual property employed in the customization of training sections, prophylactic and therapeutic aspects.

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