
Intellectual Property

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Concept of IP



Concept of IP



- It is a special property
- It is a right on the immaterial spirit of a good

Intellectual property is a very particular property right. It is alien to the thing; it is a right on the spirit of the thing. Being the owner or the possessor of the thing does not grant intellectual rights over the work.

What is intellectual property?

PROPIEDAD ORDINARIA	PROPIEDAD INTELECTUAL
BIEN MATERIAL	BIEN INMATERIAL: la creación ORIGINAL en su EXPRESIÓN (<i>soporte tangible o intangible</i>)
MONOPOLIO QUE LA LEY CONCEDE sobre el objeto	MONOPOLIO QUE LA LEY CONCEDE sobre el objeto
DURACIÓN: ILIMITADA	DURACIÓN: LIMITADA
REGULACIÓN: CÓDIGO CIVIL (348 y ss)	REGULACIÓN: TRLPI 1/1996 (subsidiariamente, Código Civil, 428,429)

IP Law



Royal Decree Law 1/1996, of April 12, Rehashed text of the Intellectual Property Act

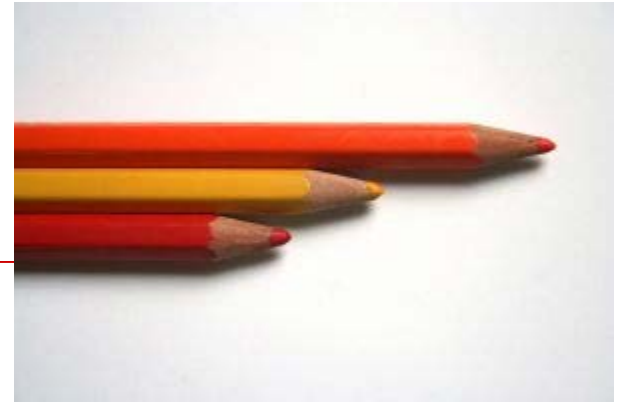
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Criteria for the protection of IP

* IP of a literary, artistic or scientific work corresponds to the author by virtue of its **creation** (art. 1 IP Law)

* Art.10 IP Law requires the creation to be **original**

Therefore...



- The following criteria are not relevant:
 - The destiny of the work
 - The utility of the work
 - The public's estimation of the work
 - The extension of the work

Author

- **Art. 5.** *Authors and other beneficiaries*
- 1. Author is the **natural person** that creates a literary, artistic or scientific work
- 2. However, other persons may benefit from the protection granted by the IP Law

Author



Homenaje al pintor. CLAUDIA GROLL.

Created by an individual

- Need of human intervention



Slater, Naruto (Indonesia)

Original works

- **Art. 10. *Original Works and titles***
- 1. The subject matter of intellectual property shall comprise all original literary, artistic or scientific productions expressed in any mode or form, whether tangible or intangible, known at present or that may be invented in the future, including the following: (...)
- 2. The title of a work shall be protected as a part of the work provided that it is original

Plagiarism

- No definition in our legal system
- See:
 - Doctrine → Impersonation or identity theft
 - Courts → SC (28/01/95): when two works present substantial similarities (characters, history, rhythm,...) and it is not only a “rough copy”
 - E.g. TV formats

Expression

- **Expressed by any means or medium,** tangible or intangible, currently known or that may be invented in the future



Ownership of medium

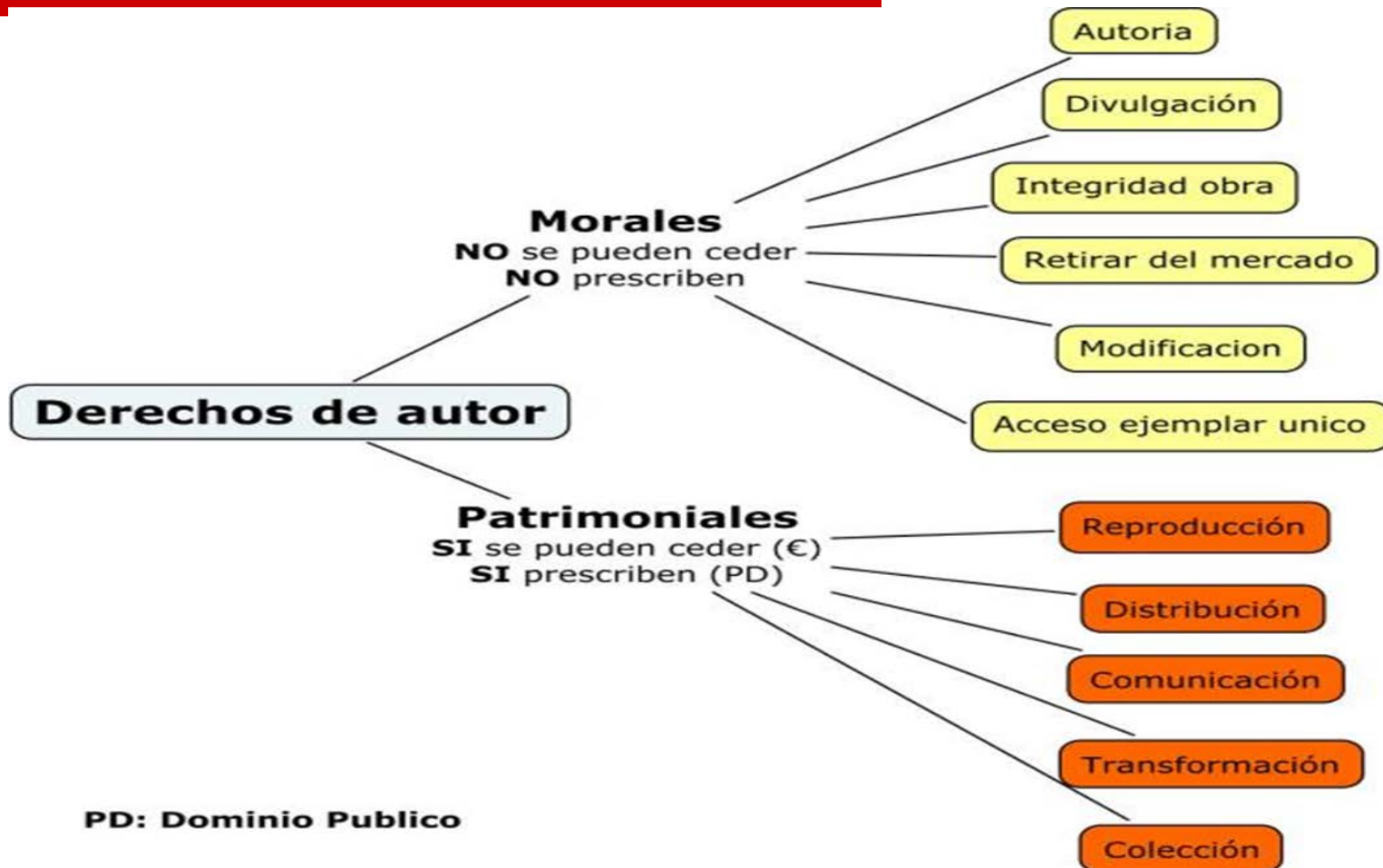
- The buyer of the medium to which the work is incorporated does not have any exploitation right over the work
- E.g. - Oteiza, CA Madrid 4-05-2015 (ownership of Works by the Foundation does not entail ownership of IP rights)

IP scope

The IP of an author is made of several powers:

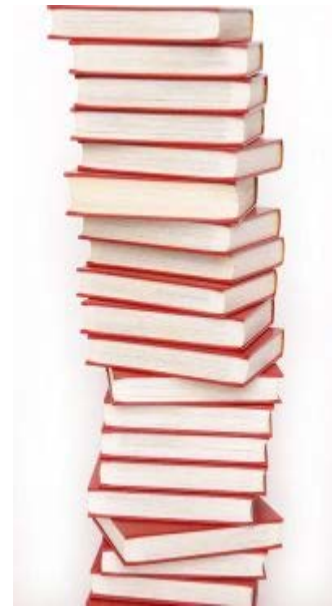
- **Moral rights** (cannot be transferred)
- **Economic rights** (can be transferred)

Author's powers



Author's powers

- Moral rights (arts. 14-16):
 - Divulgation
 - Paternity
 - Withdrawal of the work
 - Access to rare copy
 - Integrity/Modification
- Patrimonial rights (art.17 and following):
 - Reproduction
 - Distribution
 - Communication to the public
 - Transformation
 - Others



Time limit

- ❑ Author's rights are property rights limited in time
- ❑ The "*post mortem auctoris*" term is a guarantee of benefits for heirs of author
- ❑ International rule:
Life of author + X years



Time limit of moral rights in Spain

- Positive powers: decisions to do or not to do (modification/ withdrawal/ access to rare copy) → **are extinguished with the author's death** (except the publication right: 70 years p.m.a. [safe the case of the author's objection to the publication during his life])
- Negative powers: paternity, integrity → Survive the author **without term**

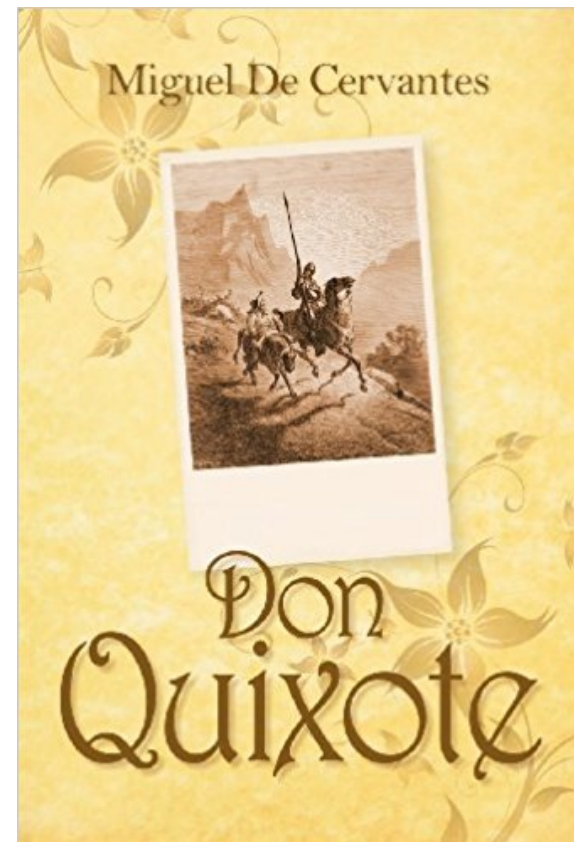
Time limit of patrimonial rights in Spain

□ Art. 26. *Duration*

Patrimonial rights of the work will last during the life of the author and 70 years after his death

And then?

- Fall into public domain:
 - general access to the work;
 - there is no need to ask for authorisation to use it



Limitations that may be interesting for journalists

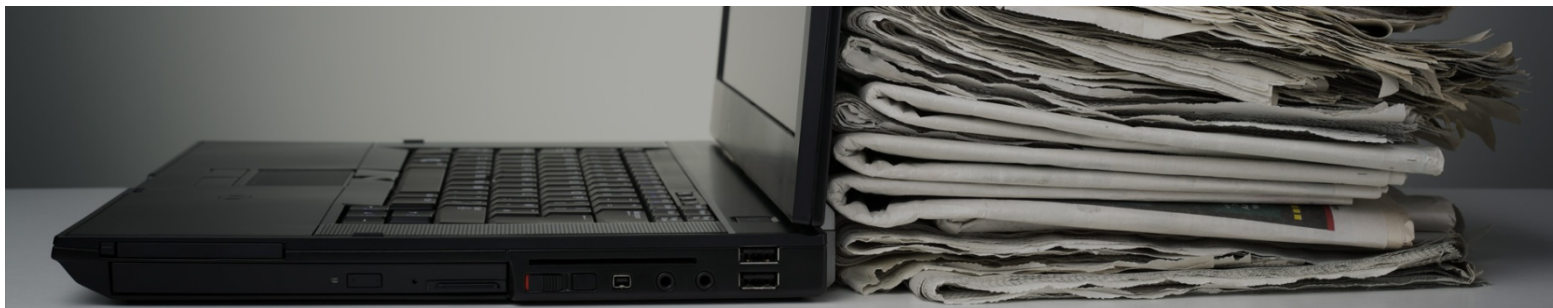
Permitted uses of protected works

There is no need of authorisation for these uses (although in some cases they have to be remunerated)



Art. 32 Quotations

- Periodical compilations in the form of press summaries or reviews are considered to be quotations.
- However, compilations of press articles with **commercial purposes** cannot be made if the author opposes to it. If the author has not expressed his opposition, the author has the right to an equitable remuneration.



Case

- A digital newspaper selects every day a big number of articles from other newspapers and publishes them in its web page, either quoting the source of the information or copying the title and linking to the source.

The other newspapers start proceedings against the digital paper.

- Shall they be successful?

Arts. 33 and 35. Articles on topical subjects and reporting on current events

- 1. Studies and articles **on topical subjects** disseminated by the media may be reproduced, distributed and communicated to the public by any other media of the same type, **subject to a mention of the source and author, and provided that no reserve copyright notice appeared on the original.** All the foregoing shall be without prejudice to the author's right to receive the agreed remuneration or, in the absence of agreement, an equitable remuneration.



- 2. Any work that may be **seen or heard in the reporting of current events** may be reproduced, distributed and communicated to the public, **but only in the extent justified by the information purpose.**