

FOR A CHANGE IN THE LEGAL PROTECTION OF PHOTOGRAPHY

Those of us who sign this Manifest are claiming for a change in the legal protection of photography in Spain.

Recently a series of sentences has been passed in Spanish Courts denying the category of “original work” of photographs taken by professional or non-professional photographers (mainly photographs of nature), giving them the legal category of “simple photographs”. For photographers, this interpretation means a very limited protection of their economic intellectual property rights and the denial of any protection of moral intellectual property rights (for example recognition of authorship, protection of manipulation, etc). The Courts base their interpretation on the idea that there is no “art” or “individuality” when photography only portrays reality.

While the Spanish High Court protects an instructions leaflet for a shower door as “an original piece of literary work”, and the “summer hit”, despite being composed by a computer, enjoys full protection by Intellectual Property Right as “original musical work,” photography and especially photographs of nature, on the other hand, cannot be legally considered as “original pieces of art” as they lack the “creative edge,” according to the subjective valuation of some Judges.

You have to know that Spain was the pioneer in the legal protection of photography. The very early Intellectual Property Rights Law of 1879 and its regulations specifically protected photography as “original work” putting it on the same level as “classic original works” like literature or artistic works. The division between “photographic work” and “simple photographs” was introduced in Spanish law in the year 1987, when legislation approved an important reform of Intellectual Property Right Law, which is still in force. Spanish legislation followed the example of Austria and Germany, quite different from the majority of other European Countries. The intention of this legislation in Spain was to reinforce the legal protection of photographs against new technology - But legislation failed.

The clever lawyers who defend those who exploit our photographs without licence or mention of authorship in an abusive way, have discovered the double legal protection of photographs as a gold mine. Since the year 2000 their clients pirate our photographs and even manipulate them as they wish. But when the pirates (editors, companies, etc) are actually summoned to Court by the photographers, their lawyers simply have to deny the character of “original work” of the pirated photographs. In this way, the pirates succeed in only having to pay the photographers the same amount

of money in concept of damages or compensation as any “legal client.” *As you can see, piracy of photographs has no risk while pirates only have to pay legal costs in addition to the “normal retribution” of photographers¹.* This is why the legal valuation as “simple photographs” makes it impossible for the photographer to claim infringement of his moral intellectual property rights, as manipulation or lack of mention of his/her authorship. *Only this “extra-payment” to be made by pirates of photography could really be a weapon against piracy².*

After the last sentences of County Courts (Audiencias Provinciales), which have legally defended the “pirates” who have used our photographs without authorization, remuneration and mention of authorship, in the sense that only “simple photographs” and not “photographic work” have been exploited, because the pirated photographs “had only copied the reality” and that’s why they could not be considered as “original work”, we are forced to make this public statement of discrimination against photography and to fight for the recognition of photography as a unique creative discipline.

Consequently, we declare and demand:

- All kind of works of intellectual creation not only have to enjoy the same extent of legal protection, but also the same respect regardless of any personal or subjective valuations.
- All different disciplines of art need, without any exception, special techniques; it is the individual use of these techniques where originality of creation is born.
- All creation is expression of free thoughts or selection. The moment the photographer selects the theme, the frame, the light, the moment of the “photo”, the objective, the sensibility, the format, the camera, etc., he is interpreting reality in a very personal way, obtaining, as a result, an original and unique photograph. Two photographers will never create identical photographs even though they are in front of the same object. This is why every photograph is not only new- there is no identical image- but it is also a product of a very personal intellectual creation.

¹ This has been introduced by translator for better comprehension.

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- If their photographs are “disqualified” as “simple photographs”, photographers will not only lose their important protection of moral intellectual property rights (right to be mentioned as author, protection against manipulation, etc.) but also their photographs will become “public property” after 25 years, because the legal period of protection will have expired. Consequently, photographers are the only creators who are going to lose their intellectual property rights during their lifetime and in favour of third parties.

Our aims are the following:

- The emphatic condemnation of any form of expropriation or cultural piracy by illegal or even criminal activities, which endanger the professional future of photographers in Spain and which infringe not only the Spanish Constitution (art. 20.1.2.b)) but also the Declaration of Human Rights (art. 27.2) which both protect creativity.

- To ask the authorities to abolish the double protection or the “two class-system” in the legal protection of photographs, protecting, in this way, photography as intellectual creation without any discrimination regarding other intellectual creations.