

Transfer Of Economic Rights On The Work

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TRANSFER OF ECONOMIC RIGHTS ON THE WORK

Pursuant to the Intellectual and Artistic Works Law (“IAL”), work is any intellectual or artistic product bearing the characteristic of its author and deemed as a scientific and literary or musical work or work of fine arts or cinematographic work. **Therefore, in order for an intellectual product to be protected as a work, it must be involved in one of the types of works that are considered as objective elements and carry the characteristics of the author, which is the subjective element.**

An intellectual product may only be deemed as a work if it becomes qualified to appeal to the senses of third parties. In other words, it is not the thoughts, but the way they are reflected to the third parties is protected as a work.[1]

The owner of the work is the author of it. The rights of the author are divided in two as moral rights and economic rights. These rights are absolute rights and the authority to exercise and power of appeal against anyone belongs exclusively to the author.

Although economic and moral rights are protected side by side without getting mixed and connected, in reality these rights on the work are various powers provided by a single absolute right (copyright) arising from the ownership of the work, which cannot be easily separated from each other.

The economic and moral rights of the author on the work arise naturally as soon as it is formed without the need for public presentation or registration. The right to benefit from these rights on a work that has not been made public yet belongs exclusively to the author. The work will be made public when it is presented to third parties with the permission of the rightful author.

Moral and economic rights on the work are limited and no other moral or economic right can be created other than the rights listed in the IAL (*principle of numerous clausus*). Within this scope the economic rights granted to the author are;

- Right of Adaptation
- Right of Reproduction
- Right of Distribution
- Right of Performance
- Right to Communicate a Work to Public by Devices Enabling the Transmission of Signs, Sounds and/or Images.

Although it is regulated in a different part of IAL other than provisions governing economic and moral rights; the right of share and lien, the right of withdrawal and the right to opt out are also the rights granted by IAL to the author.[2]

Moral rights over the work are strictly personal rights. Therefore, moral rights cannot be limited or waived by the author.

Economic rights on the work on the other hand can be inherited be subject to transfer, pledge, attachment, retention, etc.. **The author or his/her heirs may transfer their economic rights on the work to others, either periodically or indefinitely, with or without consideration.** [3]

Contracts regarding the transfer of economic rights or use licences shall be written in order to be valid. In addition, ***which economic rights/rights are being transferred should be clearly stated in the contract.*** Otherwise, the transactions will be deemed as void.

Acts of disposition (such as transfer) on economic rights with regards to a work which is not created yet or will be completed in the future shall be void pursuant to the Article 48 of IAL. Nevertheless, ***there is no impediment to making a promissory act regarding the transfer of economic rights on a work that will be created and completed in the future.***

Although there are decisions to the contrary, according to the recent precedents of the Court of Cassation, economic rights or use licenses for the works created by the author during the promise period shall not be transferred to the directly and without any further act of disposition. In this context, ***the promissory acts made before the work created are considered valid, but a written act of disposition is also needed after the completion of the work in order for the transfer to take place.*** Transfer can be carried out by the author and his/her heirs or by the person whom author transferred the economic rights of the work. Although economic rights are protected separately from moral rights under IAL, acts of disposal carried out on economic rights are capable of damaging moral rights. Therefore, ***if a person who has the power of disposition only on economic rights wishes to transfer these economic rights to a third party, there must be a written approval by the author or his/her heirs in order for the transfer to take place.***

[1] Court of Cassation General Assembly of Civil Chambers numbered 2017/137, 2020/806

[2] Court of Cassation General Assembly of Civil Chambers numbered 2017/137, 2020/806

[3] 11th Civil Chamber of the Court of Cassation numbered 2004/11266, 2005/10524