

Jean Monnet Chair «The Legal Argumentation of EU Multimodal Intellectual Property Rights»

Intellectual Property Law in Spain

Imagination, not intelligence, made us human.

Terry Pratchett

PhD. Luis-Javier Capote Pérez
Civil Law Lecturer
Department of Basic Legal Disciplines
University of La Laguna / Universidad de La Laguna
Webpage: www.dcivil.com
E-Mail: lcapote@ull.es / info@dcivil.com



Property rights and Property Law

Property rights

- Subjective rights on an object

Property Law

- Rules over property rights (Private Law)

Property rights and economy

**PRIVATE
PROPERTY**

*Freedom of
ownership*

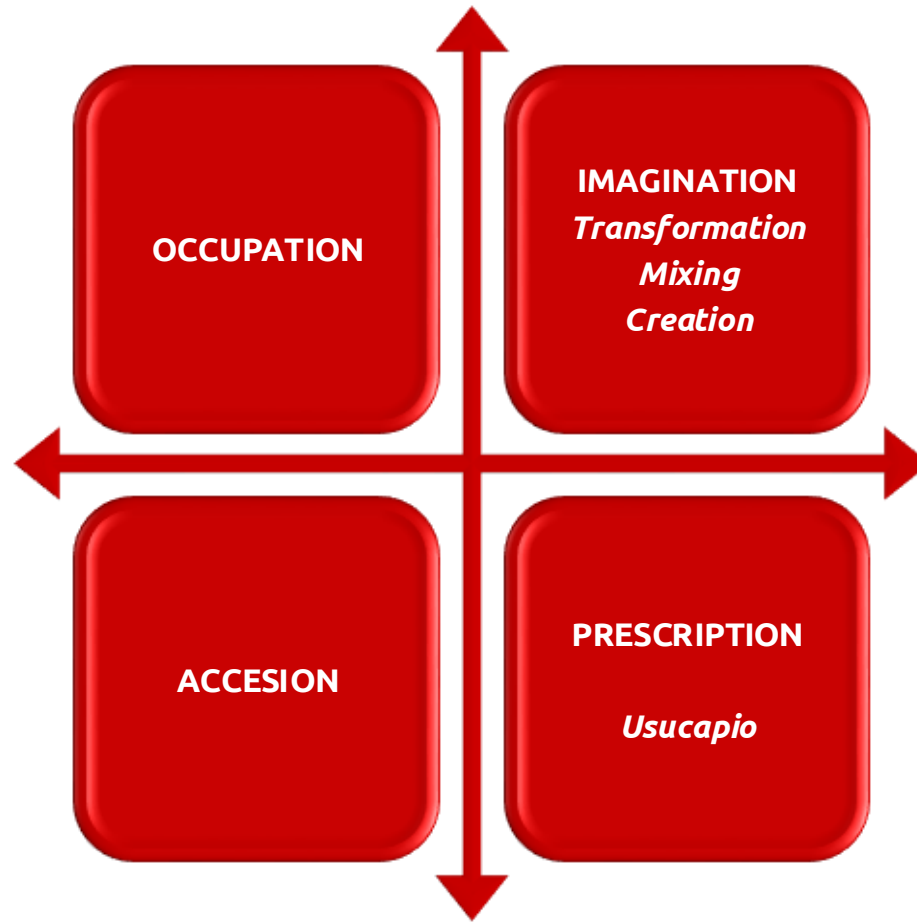
ECONOMY

Free market

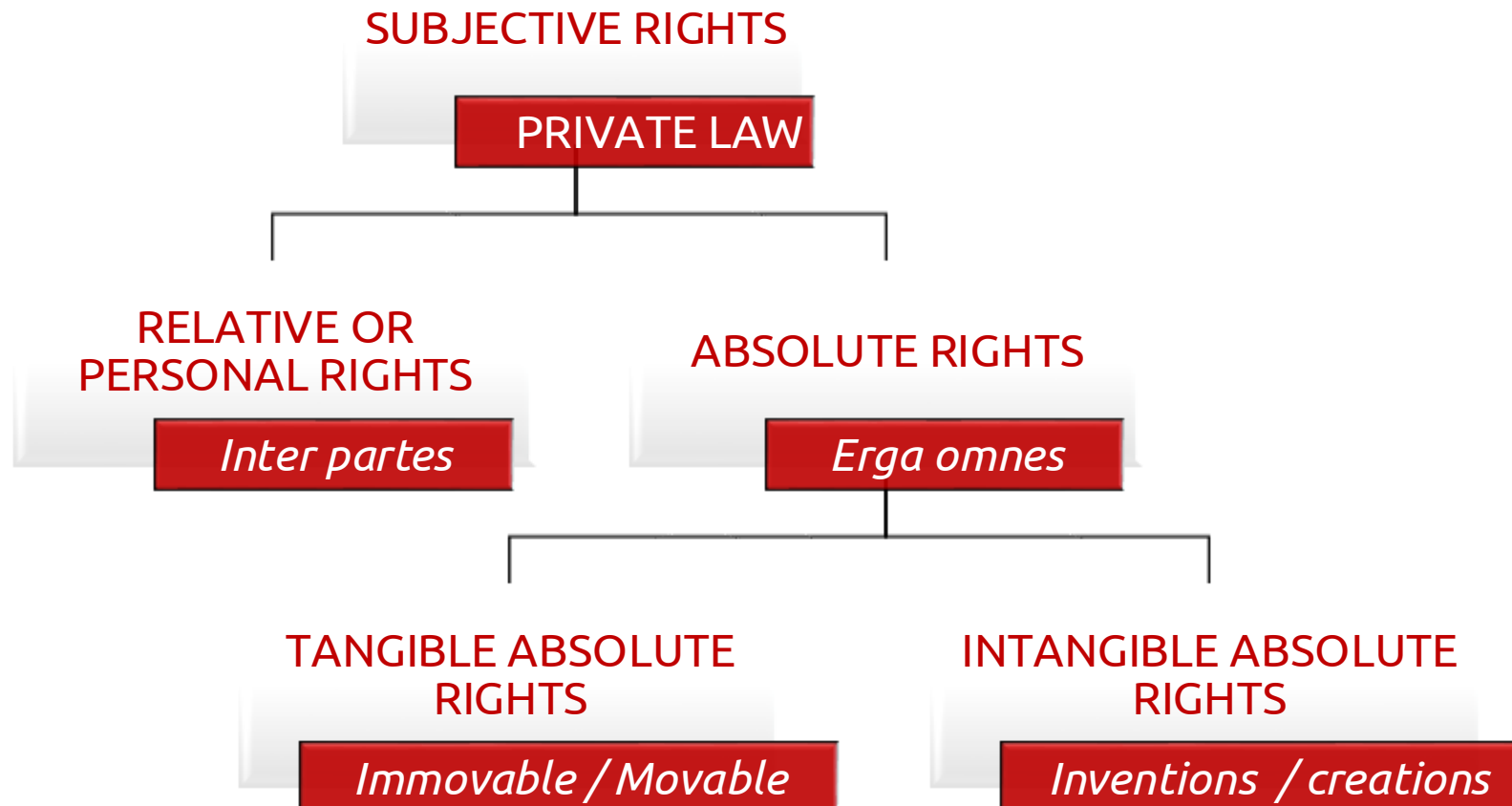
Limits to the property rights



Creation of property rights



Property rights



Intellectual property rights

**INTANGIBLE
ABSOLUTE RIGHTS**

*Inventions
Creations*

**INDUSTRIAL
PROPERTY**

*Patents
Marks
Industrial designs*

**INTELLECTUAL
PROPERTY
STRICT SENSE**

*Copyright
Creation works*

The object of protection

**INVENTIONS AND
CREATIONS**

*I imagine,
therefore, I am*

IDEA

*Unmaterial
Not exclusive
Original*

A. I.

Creativitiy

The subject of protection

IP RIGHTS

*Authorship
Related rights*

AUTHORSHIP

Art. 5.1 and 6
1996 IP Act

*Only natural persons
Apparent author
Pseudonymous*

RELATED RIGHTS

Also legal persons

Intellectual property rights

**INTELLECTUAL
PROPERTY
STRICT SENSE**

*Unmaterial
Not exclusive*

IDEA

Corpus mysticum

EMBODIMENT

Corpus mechanicum

Filling the gap with extralegal concepts



Filling the gap with extralegal concepts



What are the called “A. I.”?

APPLICATIONS

*Emulation of
humanity*

LEARN

*Feeding with
data*

Creates the A. I. apps.?



Legal nature of the authorship rights

Monist Thesis

- Only an economic perspective (property right): Art. 33 1978 SC

Dualist Thesis

- Economic perspective
- Moral perspective (fundamental right?): Arts. 20.1.b and 33 1978 SC

Intellectual property (Copyright)

Moral rights

- Identity
- Integrity
- Modification

Economic rights

- Reproduction
- Distribution
- Public communication
- Transformation
- Participation

Economic rights: reproduction

Right

- Art. 18 1996 IP Act: *Copy*

Limits

- Arts. 31, 36.3, 37 1996 IP Act
 - *Private copy.*
 - *Ephemeral copy.*
 - *Research copy.*

Economic rights: distribution

Right

- **Art. 19 1996 IP Act: *Availability to the public with embodiment.***

Characters

- **Copy of the work.**
- **Public**

Economic rights: public communication

Right

- **Art. 20 1996 IP Act: *Access without physical support to a plurality of people.***
 - *Scenic representation.*
 - *Difussion: emission, retransmission*
 - *Digital access: social networks, databases*

Limits

- **Domestic sphere.**
- **Hotels?**

Economic rights: transformation

Right

- **Arts. 9 and 11 1996 IP Act: *Access without physical support to a plurality of people.***
 - *Creation of a derivative work.*
 - *Creation of a composite work.*

Limits

- **Moral Integrity right**

Intellectual property (Copyright)

EXTENSION OF ECONOMIC RIGHTS

- **Seventy years**

Intellectual property (Copyright)

GENERAL RULE

Art. 26 1966 IP Act

Seventy years postmortem

Intellectual property (Copyright)

SPECIAL RULES

Arts. 27-29 1966 IP Act

Anonymous works: Licit divulgation

Collective works: Divulgation

Co-authorship: Death of the last author alive

Limits to Copyright

Private copy: Art. 31.2 1996 IP Act

Public activities for public security: Art. 31.1 BIS 1996 IP Act.

Copies for people with special needs and nonprofit: Art. 31.2 BIS 1996 IP Act.

Free reproduction, communication and nonprofit lending: Art. 37 1996 IP Act. *Museums, libraries, phonotecas, hemerotecas.*

Official activities: Art. 38 1996 IP Act. *Public or religious.*

Parodies: Art. 39 1996 IP Act. Open concept.

Moral rights: concept

Right

- Art. 14 1996 Intellectual Property Act:
Creation

Characters

- Personal
- Inalienable
- Irrenunciabile

Moral rights: divulgation

Right

- Arts 4. and 14.1 1996 Intellectual Property Act.

Characters

- Expression
- Not expression
- Regretting

Moral rights: paternity

Right

- Arts. 14.3 and 14.3 1996 Intellectual Property Act.

Characters

- Recognition
- Anonimation / revelation
- Pseudonymous

Moral rights: integrity

Right

- Arts. 14.4 and 14.53 1996 Intellectual Property Act.

Characters

- **Work protection**
- **Work modification**

Moral rights: duration

GENERAL RULE

Art. 15 1996 IP Act

Author's life

Moral rights: duration

SPECIAL RULES

Art. 15 1996 IP Act

Divulgation: seventy years postmortem

Paternity: perpetual

Integrity: perpetual

Related rights

NEIGHBOURING RIGHTS

Artists: *singers, dancers, choreographers...*

Phonogram producers: *record companies...*

Audio-visual producers: *movie companies*

Broadcasters: *radio and TV*

Related rights

NEIGHBOURING
RIGHTS

Photographers: *mere photography*

Editors

Database producers

Divulgators

Industrial property: marks and patents

TRADEMARK

- Sign, design, expression
- Identification of services or products
- Renewable

PATENTS

- Invention
- Using, producing, selling exclusively
- Limited period of time

Case I: Martín Chirino vs. Santa Cruz City Council



**Martín Chirino
vs.**

**Santa Cruz
City Council**

Case I: Prologue

This case reflects the complex relations and limits between an author's rights over his work of art, in this particular case, a sculpture. Aspects of ownership rights over *corpus mechanicum* or physic representation of that work, when transmitted to a person other than the artist, will also be considered. A study of these aspects will be developed in explaining the controversy between the Canarian sculptor Martin Chirino and Santa Cruz de Tenerife City Council, concerning the destiny of the sculpture "*El sueño de los continentes*" ("*The Dream of Continents*") created by Chirino and acquired by city.

Case I: About Martin Chirino:

Martin Chirino (1925-2019) was born in Las Palmas de Gran Canaria. He is one of the most significant Spanish artists of the Twentieth Century, being a prestigious representative of abstract sculpture in our country. In his works, he uses most often iron as a material. His long career has been widely prized.

Case I: “El sueño de los continentes”

In 1992, he is assigned by Santa Cruz de Tenerife City Council to create a sculpture for its Europa Square. For that purpose, he studied the environment of his future statue's placement, including space, form and proportions, so that his work would fit adequately in its appointed setting.

Case I: The origin of the dispute

In 2009, Santa Cruz City Council orders the partial dismantling of the sculpture. This procedure derives into a claim sued by Chirino, firstly put before the Council itself, according to public rules applicable to the controversy.

Case I: The origin of the dispute



Case I: The author's lawsuit

After that, the lawsuit was repeated before Court. In both claims the following facts are invoked:

1°. Mutilation of the sculpture, violating the moral dimension of intellectual property rights in its aspects of integrity of work and exclusivity of modification rights by the author.

2°. Partial destruction of the sculpture, with no report whatsoever sent to the author.

Case I: The author's request

Therefore, the sculptor demands the petitions below:

1º. Recognition of violation of moral property rights.

2º. The end of damaging those moral property rights, and the return of the work in its initial form and state.

3º. Establishment of a compensation for moral damages, valued in 270.000 euros.

4º. Publication of resolution condemning Santa Cruz City Council with all costs charged to it.

5º. Alternatively, and only if restitution of sculpture were not possible, omission of that petition, increasing then compensation for moral rights' violation to 540.000 euros.

Case I: The Council's answer

Santa Cruz Council answered both claims with identical arguments. First, it presented one report to justify partial dismantling of the sculpture. The justification is based on the sculpture's condition. Its structure had cracks and fissures, with the result of provoking a risk in its stability. Second, it was declared that on 30th January 2009, an additional damage was detected in the sculpture's structure, produced by strong winds and affecting its stability. Having verified that the monument had suffered repeated breaks, in spite of works of soldering and maintenance, and cognizant of the weather forecast for that year's Carnival, the Council decided to withdraw part of the sculpture's structure.

Case I: The Council's answer

The council admitted that they did not inform the artist about that the dismantling, hence he was not present. This was justified on the grounds that it had been an urgent decision. However, they explained that they had scheduled the restoration of the sculpture to its original condition. Reasons of security in public places were exposed repeatedly, concluding in the declination of intellectual property rights in front of duties of protection of City Council.

Case I: The sentence

The Court's resolution recognised the importance of integrity rights and declared that security reasons were admissible to justify the dismantling of the sculpture, but not extensible as an argument to explain the late restoration. There was, at last, a damage of author moral rights.

Despite the recognition of intellectual property rights violation, the court did not accept the petition of setting compensation, arguing that in the claim there were not arguments to justify valuation included in suit. Then, the council was sentenced only to publication of resolution, because the sculpture had been restored in 2012.

Case I: Conclusions (I)

The controversy exposed in this poster reflects an example of one classic legal dilemma: the limits between rights. In his claims, Chirino invoked the moral dimension of intellectual property rights. That part never leaves the author's patrimony, despite of the physical representation being transmitted to others

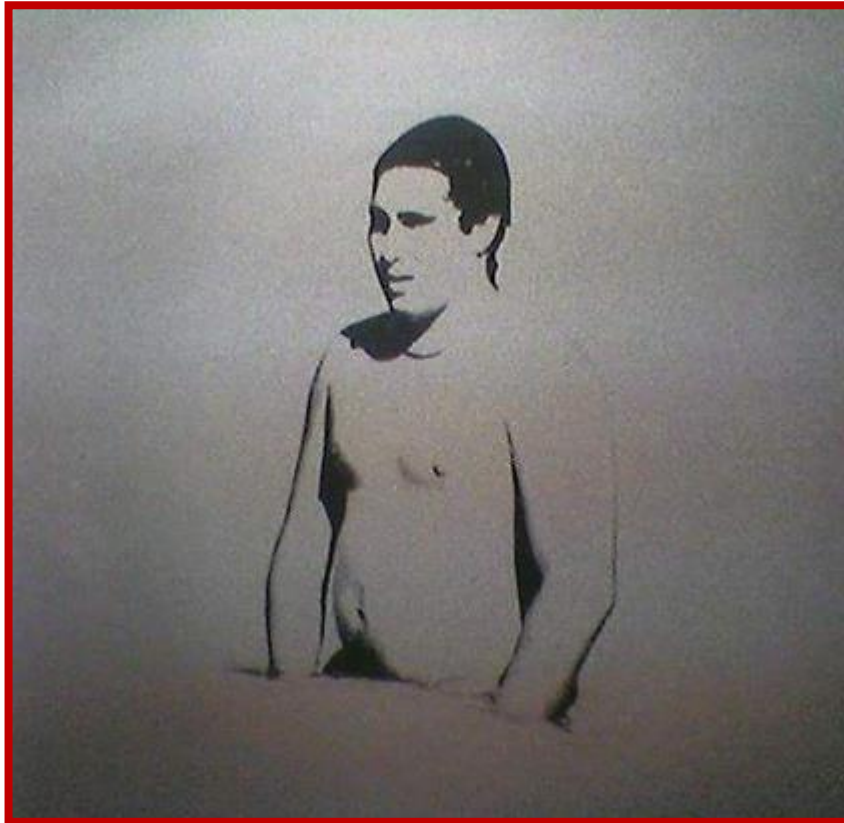
Case I: Conclusions (II)

The position of Santa Cruz City Council and Autonomous Organism of Culture is not based on a pretended and indefensible *ius abutendi*, contained in property right over *corpus mechanicum*, but on the application of a power that results in citizenship protection: warranty of security in public places. This argument justifies initial actuation and only delays in restitution of sculpture supports a jurisdictional resolution partially adverse.

Case I: Conclusions (and III)

Moral intellectual property rights maintain their validity as inherent faculties to *corpus mysticum* of all works, independently of ownership over *corpus mechanicum*. These rights can never justify the realisation of activities which could violate moral rights. Therefore, the classic idea about *ius abutendi* as a faculty of property rights is doubly discarded and denied in intellectual works. However, moral rights are not absolute, especially when colliding with other rights like public protection in public places or imperative rules like avoiding security risk in public places.

Case II: Photographic work and mere photography



Sancho Panza (2005)

Authorship: Rubén Acosta Morales

Digital impression on canvas.

80 x 79.8 x 3.4 cm

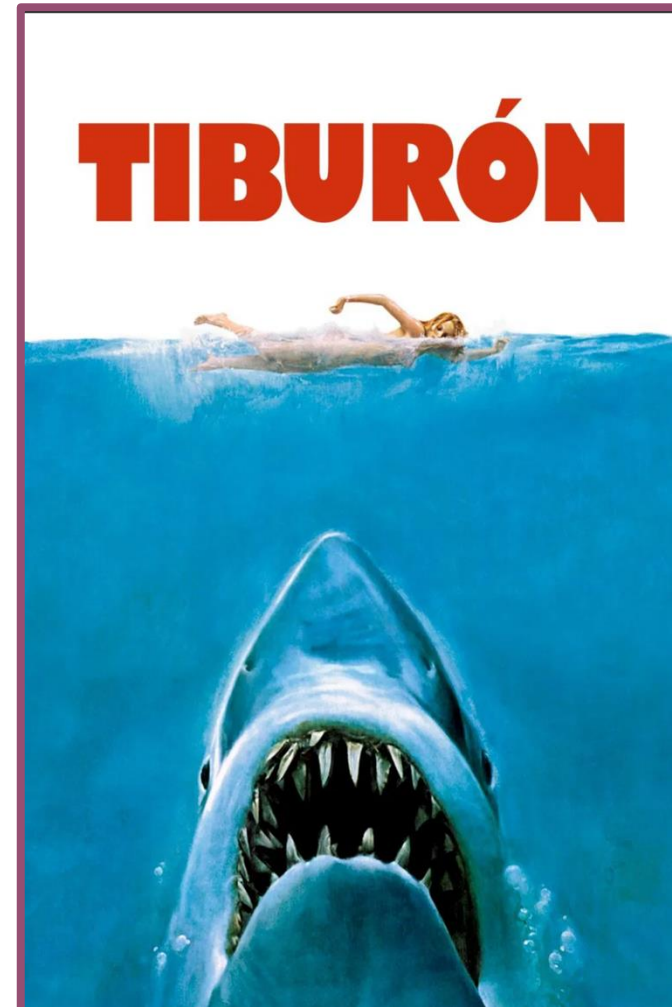
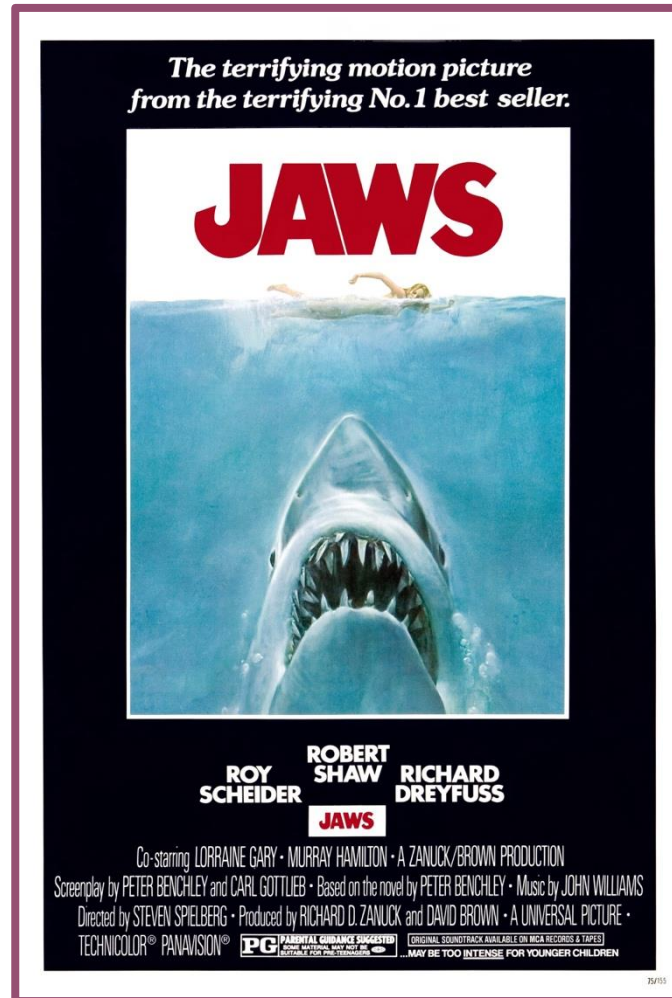
Description: *Two-dimensional work of rectangular format and vertical arrangement, being a photograph edited in black and white of a male figure on the beach*

Case II: Photographic work and mere photography

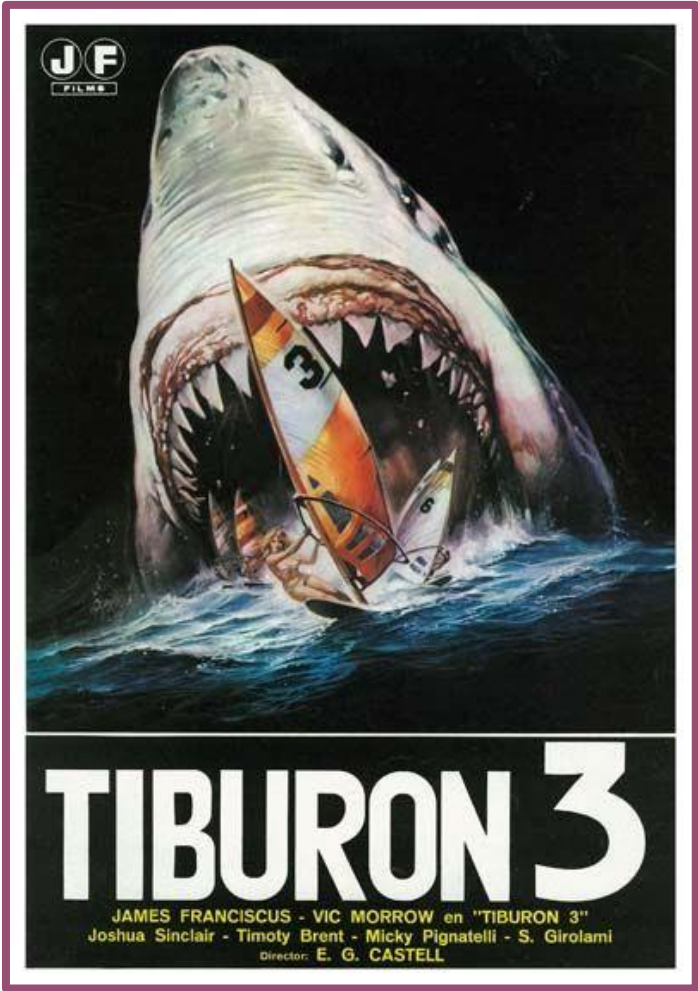
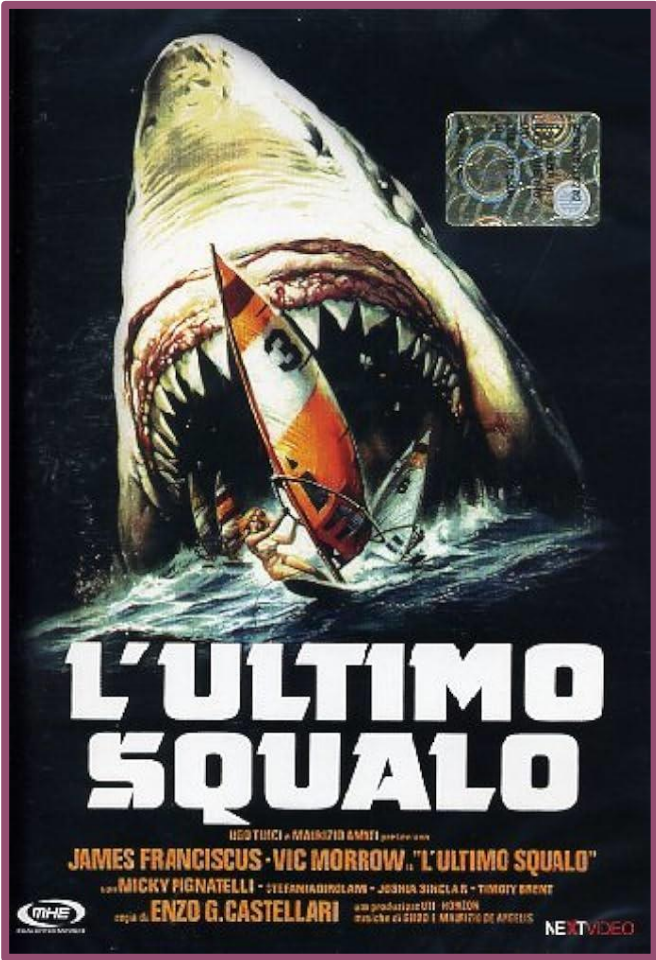


Photo from the official FB webpage of Francisco-José Rivera-Pantoja.

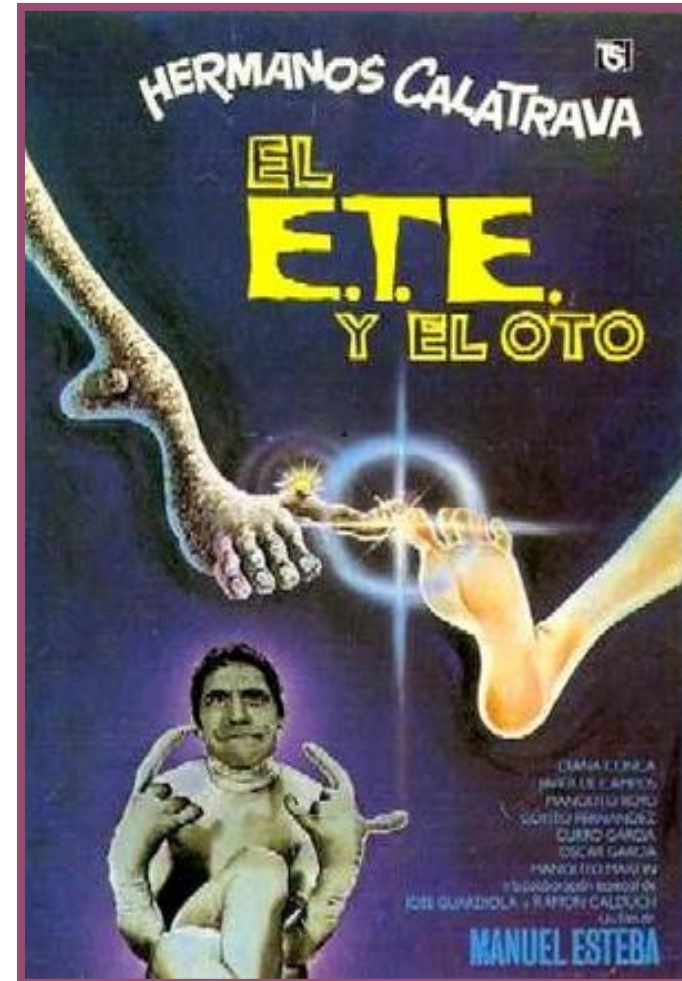
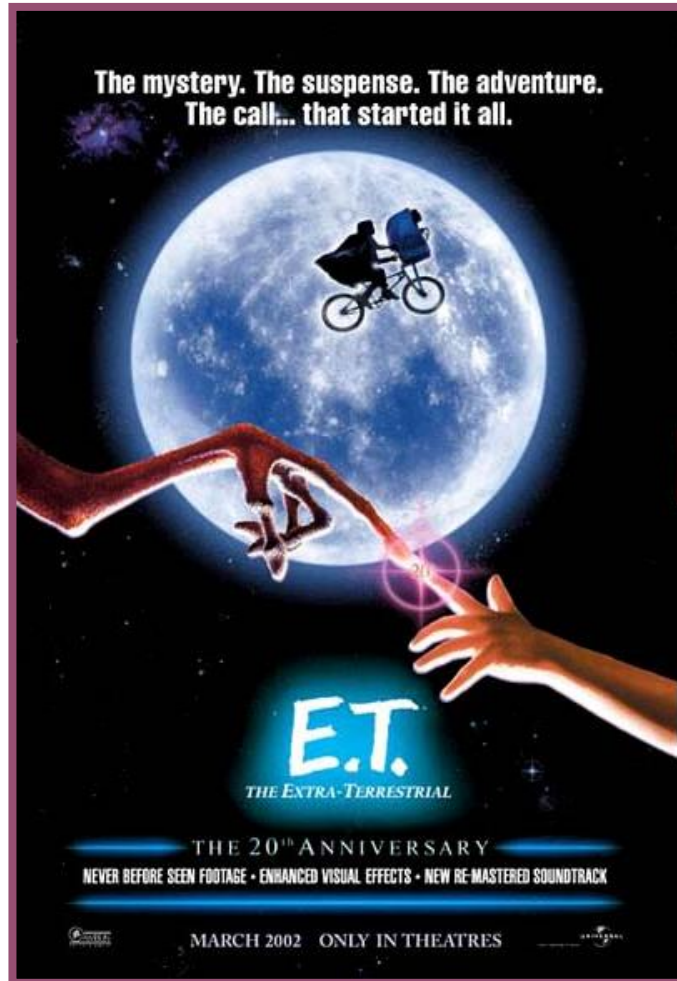
Case III: Original works, exploitation works and parodies



Case III: Original works, exploitation works and parodies



Case III: Original works, exploitation works and parodies



Again, creates the A. I. apps.?



Then, what is the problem with the A. I.?



Porco rosso

*Tokuma Shoten / Japan
Airlines & Nippon
Television Network &
Studio Ghibli.*

Sources

- ***Constitución Española (Spanish Constitution)***
- ***Código Civil (Spanish Civil Code)***
- ***Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia. (1996 Intellectual Property Act)***
- ***Ley 17/2001, de 7 de diciembre, de Marcas (2001 Marks Act)***
- ***Ley 24/2015, de 24 de julio, de Patentes (2015 Patents Act)***



**Docencia
en Derecho Civil**