

Monograph on Intellectual Property Rights and Applicable Law, by Javier Maseda Rodríguez

It is my pleasure to give notice of a recently published monograph of my colleague Dr. Javier Maseda Rodríguez (Associate Professor of private international law at the University of Santiago de Compostela, Spain), entitled

La ley aplicable a la titularidad original de los derechos de propiedad intelectual sobre las obras creadas en el marco de una relación laboral (The law applicable to the initial ownership of intellectual property rights of works created in the context of an employment relationship).

This monograph aims to identify the applicable law to the initial ownership of intellectual property rights to works created in the context of an employment relationship. The topic is indeed a classic one for private international law scholars with an interest in intellectual property. Still, it remains a hot issue, as shown in a book that compiles with a comparative intent normative, practical and doctrinal positions on the subject, explaining at the same time the reception in Spanish law of regulations alien to the Spanish tradition – such as Art. 11 (2) English *Copyright, Designs and Patent Act* 1988, Art. 7 Dutch IPL or the *works made for hire* from sect. 201.b, par. 17, American *Copyright Act* 1976.

The research undertaken by Dr. Maseda Rodríguez evinces the controversy raised by the ascription of the initial ownership of intellectual property rights to a specific work, in light of the different responses given by legal systems –and this, in spite of the rapprochement among systems thanks to rules like the *Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886*–, both in general and with respect to works created in the context of an employment relationship. Hence the comparative law analysis, providing support for the different viewpoints as to the applicable law: on the one hand, the continental systems of *droit d’auteur*, which identify the employee as the author and therefore as original holder of economic and moral rights (art. 1, 5.1, 51 y 97.4 Spanish LPI). On the other, the *copyright* systems, which consider the entrepreneur/employer, who facilitates the creation by investing in the product,

as *author*, and therefore as original holder of all rights, economic and moral (art. 11 (2) English *Copyright, Designs and Patent Act* 1988, the art. 7 Dutch IPL or *works made for hire* of the sect. 201.b, par. 17, American *Copyright Act* 1976).

The absence of any material notion of *author* facilitates to address the question of the original ownership of intellectual property rights from a pure conflict-of-law rules perspective. Dr. Maseda approaches the issue from two points of view - employment and intellectual property-, regulated by different applicable rules -the *lex laboris* and the law regulating intellectual property rights. The *pros* and *cons* of both solutions are discussed; so is their respective implementation, which is explained decoupling moral and economic intellectual property rights, as their different nature result in different problems.

Regarding the implementation of the *lex laboris* to the original ownership of economic intellectual property rights the following three issues are tackled with in the monograph: first, the reception of *copyright* rules into Spanish law; secondly, the problems generated by the availability of economic intellectual property rights by its original owner; thirdly, the restrictions to the *lex laboris* (protection of the salaried creator: limits to party autonomy, and the recourse to the *lois de police* or the international public policy regarding the original ownership of economic intellectual property rights).

Concerning the implementation of the *lex loci protectionis* to the original ownership of moral rights, the author examines the case of claims *for* the Spanish territory and *for* a foreign country. From this point of departure he addresses the reception of foreign norms regulating authorship and/or the initial ownership of moral intellectual property rights in favor of the employer; and the compatibility with the Spanish public policy of the waiver of moral rights in favor of the employer (for instance through by way of a clause in the employment contract).

Finally, the coexistence of both regulations -the *lex laboris* and the *lex loci protectionis*- is also addressed, with a special emphasis on the conciliation of the conflicting interests between employer and employee.

Dr. Javier Maseda Rodríguez's monograph is the sixteenth volume within the series *De conflictu legum*, a compilation of monographs especially devoted to private international law with a specific focus on civil procedural international law, conflict of law rules and international commercial law.