

## Stellingen behorende bij het proefschrift van Maximiliano Marzetti

1. The comprehensive regulation of the copying of creative works becomes necessary only once technological barriers dramatically lowered the costs of making copies. Consequently, copyright law is a historical construction. As such, it is dynamic, constantly influenced by technological change, evolving social mores and stakeholders' interests (producers, users and regulators).
2. From a utilitarian perspective (Law & Economics), the *raison d'être* of copyright law is to solve a market failure (namely, the one of information goods). This rationale is more explicit in common law systems than in civil law ones (*droit d'auteur*, *derecho de autor*, *diritto d'autore*).
3. In recent times, there seems to be growing consensus between Law & Economics scholars that current copyright standards, in particular the duration of copyright, are above an abstract efficient threshold. Therefore, most economics-minded scholars suggest, *inter alia*, a reduction of current copyright terms of protection, and to abstain from further term extensions in the future (*de lege ferenda*).
4. In most jurisdictions, after the copyright term expires, the work enters the public domain. The exploitation of a work that has fallen into the public domain is, in the vast majority of countries, free of charge and devoid of encumbrances. It is considered that a broad (and gratis) public domain increases access to works (achieving static efficiency) at marginal cost, which becomes negligible in the case of electronic copies, and also incentivises the creation of new derivative works (existing works became also inputs for new ones).
5. At the moment, only a very discrete number of countries enforce a system that requires a payment of a fee, levy or tax, usually to the state, to exploit a work in the public domain (known as *domaine public payant* or *paying public domain*). Argentina is one of those few countries that enforces a paying public domain regime (*regimen del dominio público pagante*) since 1954.
6. Proponents of the paying public domain advocate it to incentivise the creation of new works but, unlike copyright law, its underlying rationale is not the solution of a market failure. The main justification for enforcing a *domaine public payant* is a wrongly-construed interpretation of unfair competition.
7. The review of economic theory and empirical studies suggest a paying public domain regime may have negative effects on welfare and a negligible effect on author's incentives to create new works.
8. The review of the financial statements of the enforcing authority of the (Fondo Nacional de las Artes) suggest the Argentinian *dominio público pagante* its inefficacious (relationship between means and intended goals). The study of the 2005-2015 decennial, suggests that between 60% to 86% of revenue is allocated to cover administrative cost whereas between

10% to 23% of revenue is actually transferred to the intended beneficiaries of the system (grants, prizes and subsidies to support national authors and artists).

9. To explain the permanence in time of the Argentinian dominio público pagante it's suggested a public-choice type of explanation. Bureaucrats and collecting societies (that collect the paying public domain fee per delegation, against an undisclosed commission) may capture most of the rent from the system. The system is also afflicted by serious agency problems. A rational apathy from those obliged to pay the tax is reinforced by the low level of enforcement against tax avoidance, given the lack of resources to police the system (low detection).
10. As a policy implication, it is suggested for Argentina to abrogate its dominio público pagante, which it is expected would lead to welfare gains. In case the Argentinian government would decide to maintain the Fondo Nacional de las Artes, it is suggested to explore less distortive sources of revenue to sustain it. Other countries, with a domaine public payant still in force would also do well to abrogate it.
11. To protect the selling power of copyrighted books, let's burn all the ones in the public domain! That's fair competition!