



The Establishment of a *sui generis* Framework for the Protection of Works of Mas: Is it a Viable Option?

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Common forms of legal protection

Intellectual property

- Copyright
- Related rights
- Trademark
- Trade secrets
- *Sui generis* rights
 - Computer programs – never materialized
 - Databases – materialized but never caught on

Unfair competition

Contracts



Advantages of copyright

- It is already there
- Automatic protection
- Familiar system, also for foreigners
- Internationally recognized
- Can be supplemented by other forms of protection
- Offers strong protection with well-defined rights
- Limitation for artistic works in public places do not apply (S. 17(a))

... and disadvantages

- Depends on jurisprudence
- Requires a protected work
- Works of mas may not be recognized elsewhere
- Sometimes not respected in practice
- No specific rules on ownership
- Limited protection for works of art in public places
- Limitations for works situated in public places may be different in other countries



Advantages of *sui generis*

- A potentially very flexible solution
- Appropriately described subject matter
- Can be supplemented by other forms of protection
- May offer strong protection with well-defined rights
- Rights on ownership may reflect the specific conditions of the industry

... and disadvantages

- Depends on both political will and later jurisprudence
- Unfamiliar system, in particular for foreigners
- Not internationally recognized
- Will not necessarily be better respected in practice than copyright
- Everything will depend on what can be agreed on in the political process



Protection through contracts

Well established system, generally recognized and used for sports 'rights'

Requires a factual basis for requiring users to enter into contracts, such as physical control of venue

Comprehensive drafting required, but templates exist

Does not bind third parties who are not privy to the contract

Very flexible type of protection, if parties can agree

Can to some extent be imposed on media seeking accreditation to the venue



Protection against unfair competition

Well established system, but very different levels of protection in different countries

May be used to supplement copyright, related rights and rights established through contract

In practice varying, sometimes unclear and often uncertain scope of rights

