

# Copyright and Design Cumulative Protection

Jorge Moya Ballester

Universidad de Alicante

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- The different cumulative systems
- Differences between copyright and Industrial design
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# The cumulative principle

- Directive 98/71 EC, on legal protection of designs:
  - Article 11.2 b): Registration shall be refused or declared invalid if it constitutes an unauthorised use of a work protected by copyright law.
  - Article 17: A design shall also be eligible for protection under the law of copyright. The conditions, including the level of originality required, shall be determined by each Member State.
- Council Regulation 6/2002, on community designs, article 25.1 f) and 96.2

# The different cumulative systems

- American system
- French system: unity of art. All designs can be protected through copyright
- Restricted system
  - Applied in many countries among UE
  - Not all designs can apply for copyright protection
  - Objects have to match both copyright requirements and design requirements
  - The problem is the concept of work.

# Industrial Design protection

- The legislation was developed in the last 20 years of the 20<sup>th</sup> century
- The design is created to protect an aesthetic creation
- Registration is important, but not necessary
- Up to 25 years for registered design (or 3 years for unregistered ones)
- The restriction of the design was based:
  - On Competition basis
  - The idea of promoting innovation also in design
  - The limited number of shapes that are available

# Copyright protection

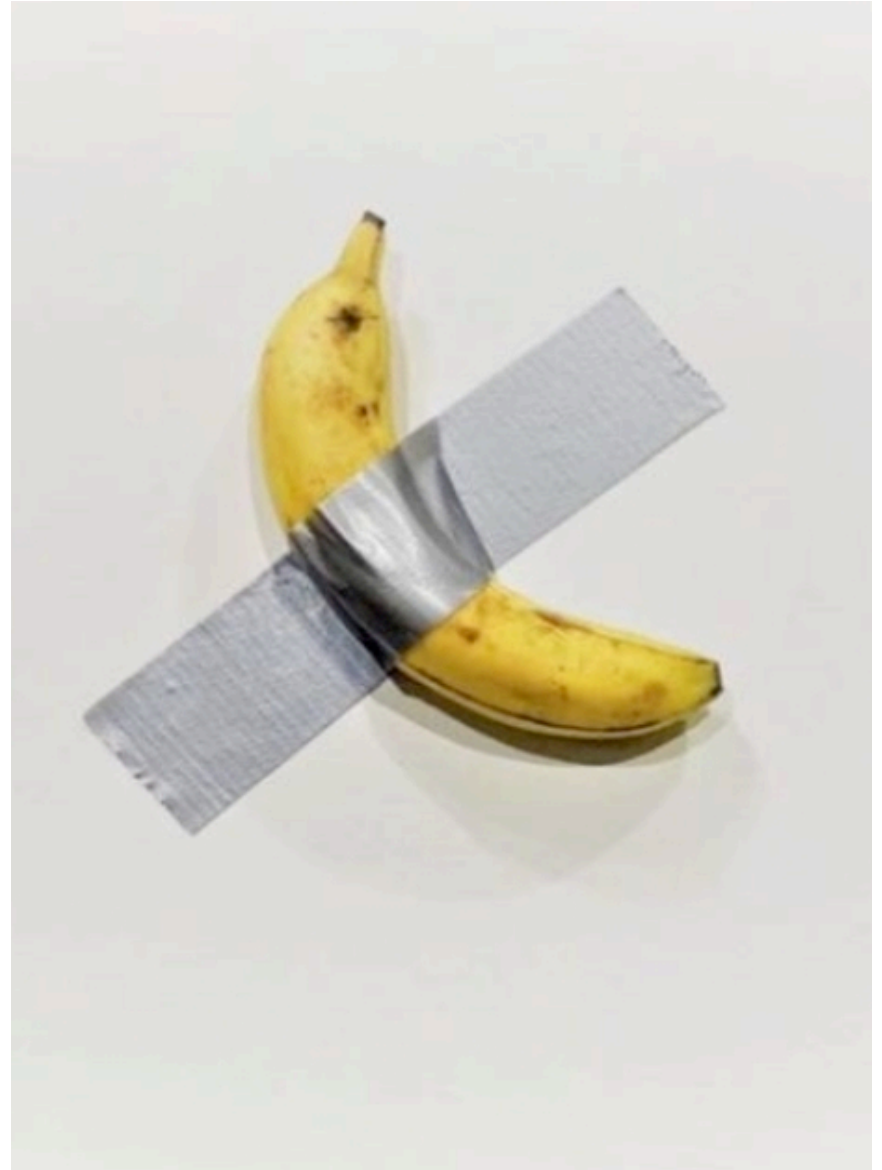
- It was developed between the 18<sup>th</sup> and 19<sup>th</sup> century
- It was meant to protect the result of the artists considered at that time as almost craftsmen
- Up to 70 years after the death of the author
- No registration is required for protection
- Concept of work. Requirements:
  - Originality (according to the Cofemel decision):
    - reflects the personality of its author, as an expression of his free and creative choices
    - necessarily entails the existence of a subject matter that is identifiable with sufficient precision and objectivity

# The Cofemel decision

- Cofemel vs. G-star Raw
- Can cumulative protection be applied to clothes designs?
  - Yes. It is not justified to exclude art objects applied a priori from copyright protection solely because said object fulfils a function (Advocate General)
  - To match both systems requirements
    - Designs: novelty and individual character
    - Copyright: Originality

# The problems of restricted systems

- Lack of security (it is difficult to ensure when an object may be considered as a work)
  - The concept of work is very vague and open
  - It is mutable





# The problems of restricted systems

An example of uncertainty

- The trip tap baby chair by Stoke
  - The artistic character was denied by the SAP Alicante (19 October 2000)
  - The artistic character was recognised by the SAP Madrid (28 May 2003).



# The problems of restricted systems

- The market needs regulations that create legal certainty
  - French and American systems provide that security
- The restricted systems need other discrimination criteria to establish whether an object can apply for cumulative protection
  - The concept of work is too subjective to determine the existence of a monopoly in the market (for more than 70 years).

Thank you!

Jorge Moya Ballester  
jorge.moya@ua.es