

INTELLECTUAL PROPERTY, CHOREOGRAPHY PIECE AND VIDEO-DANCE¹

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Abstract

In the present work we are going to analyze the principal aspects of the intellectual property applicable to the video-dance, distinguishing the different suppositions because of the subjects, and defining the rights of each one of the same ones, having in counts the applicable legislation constituted principally by the Legislative Royal decree 1/1996, of April 12, by which there is approved the remolten text of the Law of Intellectual Property, regularizing, clarifying and harmonizing the legal in force dispositions on the matter (in forward TRLPI) (BOE núm. 268, of November 5 of 201), modified by Law 21/2014, of November 4 (BOE núm. 268, of November 5, 2014).

Keywords

Intellectual Property, choreography piece, video-dance, legislation, rights

SUMMARY: I. INTRODUCTION. II. THE CHOREOGRAPHIC PIECE, CHOREOGRAPHERS, DANCERS, COMPOSERS, MUSICIANS AND INTERPRETERS. SUBJECTS AND RIGHTS. 1. Requirements for the protection. 2 Different subjects, legal cases and rights. 3. Conditions for access to the Registration of the Intellectual Property. III. THE VIDEO-DANCE: AUDIO-VISUAL PIECE, SUBJECTS AND RIGHTS. IV. CONCLUSIONS. V. BIBLIOGRAPHY

I. INTRODUCTION

In the present work we propose to think on the intellectual property applied to the choreographic piece and to the video-dance. Departing from the regulation in the juridical Spanish classification, we are going to analyze the subjects and the rights that correspond to them. Special interest has the study of the intellectual property in the video-dance, whose definition is not regulated by the Law, and in that they control different subjects, given his consideration as audio-visual piece.

II. THE CHOREOGRAPHIC PIECE, CHOREOGRAPHERS, DANCERS, COMPOSERS, MUSICIANS AND INTERPRETERS. SUBJECTS AND RIGHTS

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1. Requirements for the protection.

The peculiarity of the artistic discipline and the different subjects that can intervene in the same one, suppose a few difficulties added to be able to delimit the copyright of each one of them, moral and patrimonial.

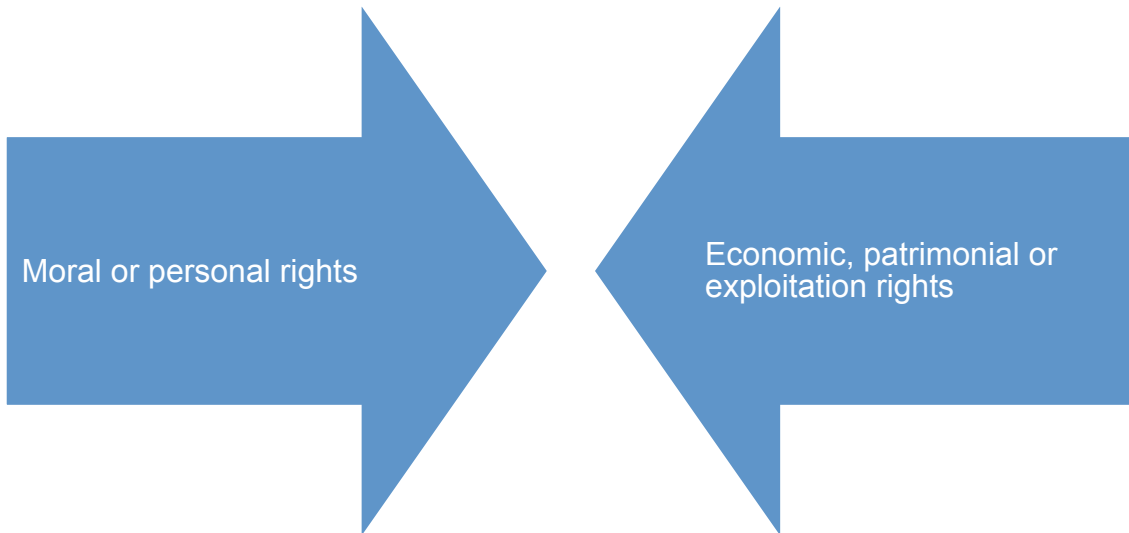


Figure 1. Copyright in the area of intellectual property in the juridical Spanish classification. (Source: elaboration from TRLPI).

They are also called related rights corresponding to persons other than the author, such as performers, phonogram producers, producers of audiovisual productions, broadcasters and publishers.

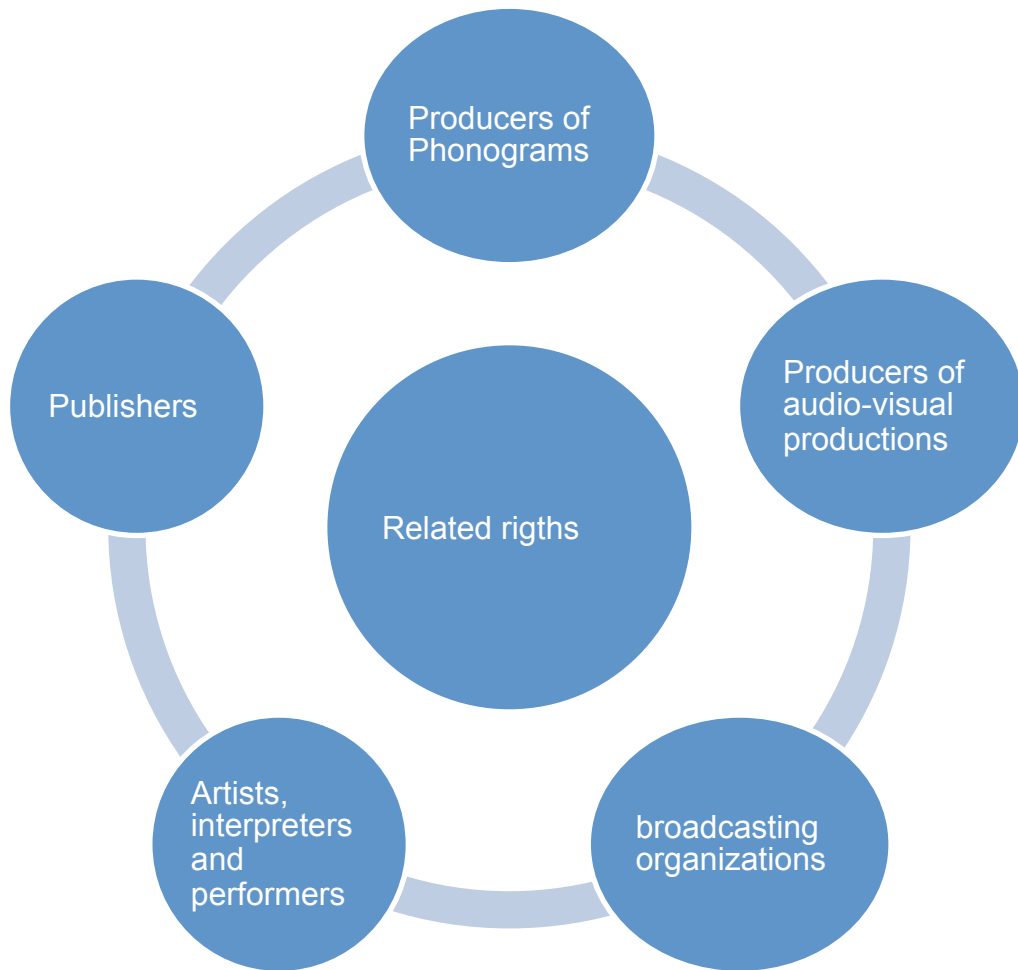


Figure 2. Related Rights to the field of intellectual property in the Spanish legal system (Source: elaboration from TRLPI)

he TRLPI, in his art. 1, protects, for only fact of his creation, the author of a literary, artistic or scientific work. To enjoy the above mentioned protection the work has to be original, that is to say, that ensues from the inventiveness of his author (RAE); expressed by any way or support, tangible and intangible, present or future.

In the WORLD DECLARATION OF THE INTELLECTUAL PROPERTY it is considered to be like "propieólectual" any property that should be considered of intellectual nature, which should be deserving of protection. The artistic productions are included.

Inside the object that the art contemplates. 10 TRLPI is the works and original titles (HERRÁN, 2009), between that it includes the choreographies, besides the musical compositions (with or without letter), the dramatic and dramatic - musical works, pantomimes and theatrical works, cinematographic and audio-visual work. Also the photographic works and the expressed ones are included by analogous procedure to the photography (on it, see more widely: RAMON, 2013). The title of a work, when it is original, will remain protected as part of the same one..

Therefore, the choreographer considered as author and creator of the choreographies is considered to be an author (providing that the choreographic work should assemble the requirements indicated to be protected) by the rights

of exploitation (with regard to reproduction, distribution, public communication (included the downloading and the streaming (CODE OF GOOD PROFESSIONAL PRACTICES FOR THE SECTOR OF THE DANCE) and transformation that they cannot be realized without possessing his authorization, except the cases exempted by the norm) and mulberry trees.

It integrates intellectual property, as the art. 2 TRLPI for personal and property rights that grant character to author full control and exclusive right to exploit the work, always with the limitations established by law.

The moral or personal right belonging to the author is irrevocable and inalienable character and is composed of the following rights, as the art. 14 TRLPI:

- the decision on whether the work must be disclosed and way of disclosure. if the disclosure will perform with his name, with a pseudonym or sign or anonymously.
- Require the recognition of being the author of the work.
- Require the integrity of the work be respected and prevent any act likely to deform, modify, alter or prejudicial to it and detrimental to its reputation or undermined.
- modifying the work with respect to the rights that have been acquired by another, and respecting the protection of cultural assets.
- Remove the work of the business environment changes because of convictions intellectual or moral character. In this case you must first compensate those with rights of exploitation of the work.

If, subsequently, the author decides to resume exploitation of his work have precedence owing them provide the author, former owners of the rights and conditions that are similar to the original.

- Access to the sole or a rare copy of the work when you do not have the author, in order to exercise the right of disclosure or any other that is applicable.

No may be required to exercise this right displacement of the work, and access to it will be held at the place and manner that cause the least inconvenience to anyone who has possession. This should be compensated for damages, if any.

Economic, patrimonial or exploitation rights are regulated in the arts. 17 ff. the TRLPI. Including the rights of reproduction, distribution, public communication and transformation, to be carried out with the authorization, except in cases specified by law.

Regarding public communication is regulated by art. 20 TRLPI and be especially the type of work we are analyzing, it is considered as such:

«a) stage performances, recitations, dissertations and public performances of dramatic, dramatic-musical, literary and musical works by any means or process.

b) the public projection or display of cinematographic works and other audiovisual».

In addition and without prejudice to the copyright in the original work, they are also protected by intellectual property called derivative works. They are referred to in art. TRLPI 11 and comprise:

- the translations and adaptations;
- the revisions, updates and annotations;
- the compendia, summaries and extracts;
- the musical arrangements
- whatsoever transformations of a literary, artistic or scientific work

While the choreography in TRLPI is mentioned, it is not concerned with defining the choreographic work. The General Society of Authors and Editors of Spain (SGAE) in its glossary, defines it as:

«It is understood as the set of steps and figures of a dance or dance that can be represented in a role by signs and usually develop a storyline. Often the choreographic work is accompanied by a musical work and sometimes a spoken text. Together these attributes make up what is known as "ballet».

The doctrine has followed this definition affecting the essential feature in this type of discipline, so it comes to creativity or originality, which is constituted by the so-called body language (MARTINEZ, 2014).

Therefore, body language as an original work would be under the cloak of protection of intellectual property, and the support to which the regulation refers would consist of the so-called stage space (in the case of the work live, it would be an ephemeral support and closely linked to the duration of the representation) (MARTINEZ, 2014).

The choreographic work as stage work, involved much more than any other work of his representation before the public.

2 Different subjects, legal cases and rights

TRLPI considered the performer to the person who presents, sings, reads, recites, interprets or executes a work in any form (art. 105).

Within the field of dance, we can find various subjects:

-Author choreographic work: moral and economic rights. He is the author of the work and will require an individual authorization of it to be used or exploited. You can decide how and in what time can be used creation and economic rights to receive (MARTINEZ, 2014).

Choreographic work, author and incorporation of music to work. Shall apply as stated above regarding the author and as for the music can be with several hypotheses as regards the creation of choreography and incorporation of music.

It would be a composite work, which can also be three situations:

a) Choreography and music that is part of the public domain. In this case no authorization of the author is needed.

b) existing choreography and music, not composed specifically for the work. In this case no copyright, so the author's permission is needed and economic rights will be generated for it.

c) Choreography and music composed for the work. In this case no copyright, so you need the author's permission

In turn, it can be music that is part of the public domain, so you do not need permission of the author; or may be pre-existing music that is copyrighted, so the author's authorization will be required and economic rights will occur; or may be expressly create music for choreographic work, in this case, permission of the author, assumed longer be provided, as is a creation of the piece is also needed: choreography and music together. economic rights for the composer will also be generated.

In this sense, we must pay particular attention to what is indicated in the arts. 26 ff. TRLPI. The exploitation rights have a duration matching with the author's life and seventy years after his death or declaration of death.

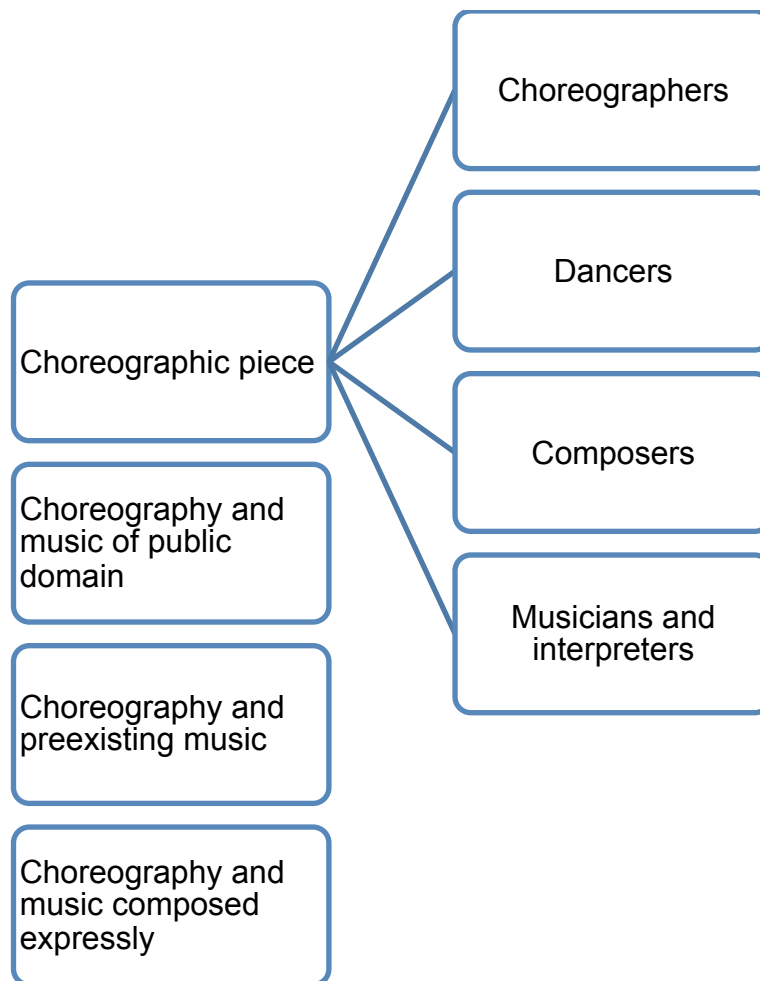


Figure 3. Subjects who may be involved in the choreographic work and composite work situations. (Source: compiled from TRLPI and MARTINEZ, 2014).

As regards the duration and computing posthumous, pseudonymous and anonymous works, we must address indicating the art. 27 TRLPI. This provision refers to the works referred to in art. 6 TRLPI², and he considers that last seventy years calculated from the lawful disclosure.

² It refers to the presumption of authorship, anonymous or pseudonymous works and indicates that:

In the case before the period has elapsed the author was known, in cases where you have used the pseudonym leaves no room for doubt, or because the author reveals his identity, will apply as indicated in the art. 26 TRLPI.³

In the case that the works have not been lawfully disclosed, the exploitation rights last seventy years since the creation of these, when the term of protection is not calculated from the death or declaration of death.

Contemplated in the art. 28 TRLPI, duration and calculation of the works in collaboration and collective. It is understood, in this case, to cinematographic and audiovisual works, whose exploitation rights last a lifetime co-author plus seventy years after the death or declaration of death of the last surviving co-author.

In the case of musical compositions with words, the exploitation rights have duration encompassing the life of the author of the letter and of a musical composition, and seventy years after the death or declaration of death of the last survivor, provided that their contributions They were specifically created for the musical composition with words.

Law 21/2014 introduces the art. 37a. This provision provides the so-called orphan works (about it, you can see more broadly: ESPÍN, 2014; LACRUZ, 2014 and 2015; SÁNCHEZ, 2015). Are those works whose rights holders are not identified or being identified, they are not located, despite a previous search diligently.

The standard incorporates different assumptions about the situation that not all owners have been identified.

If schools, museums, libraries and publicly newspaper libraries, and public broadcasters, files, record and film libraries may reproduce the purpose of digitizing orphan works as long as there is no profit is regulated and this is for purposes of restoration or conservation as well as cultural and education:

«a) cinematographic or audiovisual works, phonograms and works published in books, newspapers, magazines or other material contained in the collections of schools, museums, libraries and newspaper archives available to the public, as well as files, record and film libraries .

b) cinematographic or audiovisual and sound recordings produced by public broadcasters until 31 December 2002 inclusive, and contained in their archives' Works».

3. Conditions for access to the Registration of the Intellectual Property

«1. The absence of proof to the contrary, who appears as such on the work by his name, signature or distinguishing mark identifies him shall be presumed.

2. Where the work is disclosed anonymously or under a pseudonym or sign, the exercise of intellectual property rights belong to the natural or legal person that brings to light with the consent of the author, as he does not reveal his identity».

³ That provision states:

«The rights of exploitation of the work will last lifetime of the author plus seventy years after his death or declaration of death».

Focusing on the choreographic work, the Royal Decree 281/2003, of 7 March, by which the Regulations of General Registry of Intellectual Property (BOE no. 75 of March 28, 2003) establishes specific requirements as approved application for identifying the same, the following (art. 14):

- a) written description of stage movement.
- b) recording of the work on a medium whose content can be examined by the registration.

III. THE VIDEO-DANCE: AUDIO-VISUAL PIECE, SUBJECTS AND RIGHTS

When we are referring to the video-dance we are in the presence of a work in which the director or the performer involved, and, where appropriate, the choreographer, and in case there is music, a composer.

The audiovisual work is considered creations expressed through a series of associated images, with or without sound which are essentially intended to be shown through projection apparatus or any other means of public communication of image and sound regardless the nature of the physical media in such works.

Regarding the video-dance, it is a creation expressed in images, which can not carry or music, and that is a stand where body movement is expressed. Dance and visual art combined. It is also known as video art (FERNANDEZ, 2015), video-creation (ALMAHANO, 2011) or dance for the camera (ROSENBERG, 2012).

Many questions arise when it comes to applying the law to the audiovisual work (even integrate the cinematographic work), and in the case of the music scene, questions focus on:



Figure 4. Different rights in music as persons involved. (Source: elaboration from TRLPI)

In the case of an audiovisual work, there will be copyright as such, but there will be holders of related related rights, neighbors or are other than the author, such as performers, phonogram producers, producers of audiovisual productions, entities broadcasting and publishing.

We are not in the presence of a choreography that is recorded in a space, as in this case would be a choreographic work has been filmed, but not considered audiovisual work, to not involve any performance-realization address on it.

The legislation does not refer to it expressly and literal, but is considered as artistic work, which involved the image and the support is represented by a screen.

In this case we find subjects and rights in the area of intellectual property:

-The Director-producer of the play, is considered as the author of the audiovisual work according to art. 7 TRLPI. Have moral and economic rights.

It would be the author of choreography person to design a set of steps and figures whenever there is a physical expression where originality is found.

It differs from what would choreographic work in which it would consist of a representation in a stage (MARTINEZ, 2014).

-The Performer is the person who interprets or in any way executes a work, according to art. 105 TRLPI. In this case, if the dancer / to improvise a few steps into the video-dance is not considered as a choreographer.

However, if he had designed a series of steps or movements executed originals would have the status of author of the choreography, performing well, and have the appropriate moral and economic rights.

In this regard, the proposal of the Statute of the dancer by the Cultural Association of Friends of the dance Terpsichore, in 2002, indicated that:

«The dancers and professional dance artists, when creating a choreographic work or update and adapt choreographic works in the public domain, either individually or jointly, are entitled to all the moral and economic rights under the copyright law.

Also, when it is a dancer and choreographer interprets his own choreographic work, collects copyright and interpretation. Both rights are independent and are subject to their own regime. When the dancer works with the choreographic creator in the composition of a work, the recognition of their creative participation should be made public as part of a collaborative work».

-The Composer. According to art. 7 TRLPI is considered as the author of the audiovisual work, provided that the composition created especially for it. Have moral and economic rights.

Noted that the determination of who are subjects in video-dance is quite ambiguous from a legal point of view, being not specifically defined.

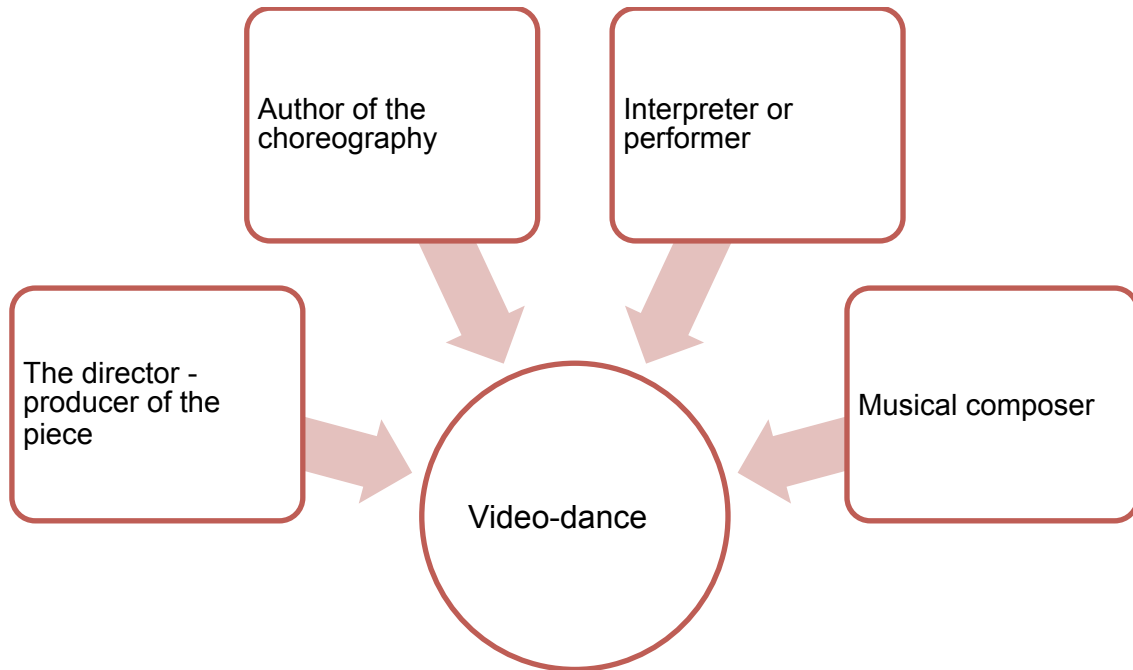


Figure 5. Subjects who may be involved in video-dance. (Source: TRLPI from processing).

Audiovisual work as a production contract giving rights to the producer may be established.

Without prejudice to the rights accruing to the authors, the contract for production of the audiovisual work shall be presumed granted exclusively to producer with the limitations set forth in this Part, the rights of reproduction, distribution and public communication, as well as dubbing or subtitling of the work

However, cinematographic works the express authorization of the authors for exploitation, will always be necessary by making available to the public of copies in whatever mode or format for use in the home or through public communication through broadcasting (RAMON, 2015).

IV. CONCLUSIONS

Intellectual property in the field of artistic work presents legal complexity caused by the lack of regulation of certain concepts that would be applicable. The choreographic work and dance video and audiovisual work have some similarities but also many differences.

The intervention of different subjects of rights in the video-dance poses numerous problems in terms of what rights they are entitled, taking into account the participation of each of them. The legislation does not adequately outlines the different cases and an interpretation of the rule is imposed to resolve conflicts that may arise.

A much more specific and concrete dance on video-regulation as well as an exact definition of the persons involved, to define more clearly how their rights would be desirable.

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