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Unraveling the meaning and scope of the ruling in case ADR 2808/2025: promoting is not narrating.



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1. INTRODUCTION

On February 23, 2026, the Plenary of the Supreme Court of Justice of the Nation decided direct amparo review 2808/2025 (hereinafter, "ADR 2808/2025"), a matter associated with the series *La Reina del Sur*. The case originated in a request for an administrative declaration of infringement in commercial matters filed before the Mexican Institute of Industrial Property by a person who considered that a media outlet had used her image, without her authorization, in a "promotional" video disseminated on the internet on the occasion of the premiere of the aforementioned series. The authority found that the infringement set forth in Article 231, section II, of the Federal Copyright Law (hereinafter, the "LFDA") had been committed and, based on the content and structure of the video, concluded that it was predominantly promotional material and not an informative or journalistic piece.

The Specialized Chamber for Intellectual Property Matters of the Federal Court of Administrative Justice (hereinafter, the "SEPI") upheld the validity of the decision, and the Collegiate Circuit Court denied amparo. On hearing the motion for review, the Plenary narrowed the constitutional issue to determining whether Articles 87 and 231, section II, of the LFDA contain constitutionally permissible restrictions on freedom of expression and of the press and on the right of access to information, by prohibiting the use of a person's image without their consent, unless the photograph is taken in a public place and for informative or journalistic purposes. The answer was affirmative: the challenged judgment was upheld and amparo was denied.

Two binding precedents (*jurisprudencias*) of the Plenary derived from that ruling, published on October 30, 2026 and mandatory as of November 3: P./J. 213/2026 (12a.), on the protection of the self-image of private persons,[1] and P./J. 214/2026 (12a.), which declares Articles 87 and 231, section II, of the LFDA constitutional.[2]

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[1] Thesis: P./J. 213/2026 (12a.), RIGHT TO ONE'S OWN IMAGE. ITS PROTECTION IN THE CASE OF PRIVATE PERSONS,Plenary, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Twelfth Period, published on Friday, October 30, 2026, digital record: 2032845. https://sjf2.scjn.gob.mx/detalle/tesis/2032845 (accessed on November 3, 2026).

2 Thesis: P./J. 214/2026 (12a.), RIGHT TO ONE'S OWN IMAGE. ARTICLES 87 AND 231, SECTION II, OF THE FEDERAL COPYRIGHT LAW DO NOT VIOLATE FREEDOM OF EXPRESSION AND OF THE PRESS, OR THE RIGHT OF ACCESS TO INFORMATION, Plenary, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Twelfth Period, published on Friday, October 30, 2026, digital record: 2032844. https://sjf2.scjn.gob.mx/detalle/tesis/2032844 (accessed on November 3, 2026).

The statement that fiction series inspired by real events cannot be considered of public interest has generated concern in the audiovisual industry, since a hasty reading could lead to the conclusion that the Court closed the door to the portrayal of real people within works of fiction. The purpose of this article is to delimit precisely what the Court did and did not decide; to distinguish between what constitutes the reason for the decision and what are ancillary considerations; to offer some criticisms of the latter; to situate the precedent against other criteria of the Court itself and of comparative law; and, finally, to analyze the impact of the 2026 amendment to Article 87 of the LFDA on pending matters.

2. DELIMITING THE SCOPE OF THE RULING

- ***Ratio decidendi* and *obiter dicta***

Every judgment contains reasoning of different kinds. The *ratio decidendi* is made up of the reasons necessary to justify the decision adopted, such that, if they are removed, the ruling loses its foundation; it is, in the words of legal scholarship, "the only element of the judicial decision that acquires authority as precedent, since it is the normative principle underlying the dispute resolved."[3] *Obiter dicta*, on the other hand, are the statements the court makes "in passing": examples, contextual considerations or generalizations that, although they may illustrate the reasoning, are not indispensable to resolve the issue actually raised. They consist of the analysis, reasoning and principles invoked by the judge in a specific case but which do not constitute the normative principle on which the decision is based.

Since the 2021 constitutional reform, the Mexican system of precedents has been built upon the reasons that justify the decisions of the Supreme Court (*ratio decidendi*), and the Amparo Law provides that it is those reasons—and not any statement contained in the judgment—that are binding.[4] Hence, a correct reading of a precedent requires identifying the legal issue that was resolved, the facts that shaped it, and the reasons without which the decision would not stand.

3 "Ratio decidendi ", See "Ratio decidendi", in Diccionario de Derecho Procesal Constitucional y Convencional (Dictionary of Constitutional and Conventional Procedural Law), Mexico, Federal Judiciary, Federal Judicial Council / National Autonomous University of Mexico, Institute of Legal Research, 2014, p. 1087. https://archivos.juridicas.unam.mx/www/bjv/libros/8/3633/15.pdf (accessed on November 3, 2026).

4 Political Constitution of the United Mexican States ("CPEUM"), Article 94, twelfth paragraph; Amparo Law, Articles 217 and 222 to 224.

- **What the Court actually decided**

To delimit these concepts, the starting point is the Civil Liability Law for the Protection of the Right to Private Life, Honor and Self-Image in the Federal District (now Mexico City; hereinafter, the "Honor Law"). Most scholars agree that personality rights are subjective rights of non-economic content, since their object of protection is moral interests, and they are conceptualized as: honor, private life - also called the right to privacy - and self-image. As personality rights, they are enforceable *erga omnes*, non-transferable, strictly personal, unwaivable and unattachable. However, these rights are not absolute; they have limits and are defined as follows:

- Honor is the assessment that people make of a subject's ethical and social personality and includes the representations the person has of himself or herself, which is identified with good reputation and standing. Honor is the legal interest constituted by the psychological projections of the feeling of esteem that a person has for himself or herself, in light of what the community in which he or she acts considers an estimable feeling.

- Private life is that which is not devoted to a public activity and which, therefore, is inconsequential and has no direct impact on society; and to which, in principle, third parties should have no access whatsoever, since the activities carried out within it are none of their concern nor do they affect them. The right to private life materializes when family, home, papers or possessions, and all conduct carried out in places not open to the public, are protected from the knowledge of others, when they are not of public interest or have not been disclosed by the right holder.

- Self-image is the identifiable reproduction of a person's physical features on any material medium. Every person has a right over his or her image, which translates into the power to dispose of his or her appearance by authorizing, or not, its capture or dissemination.

The main limits on these rights in the case at hand are freedom of expression and freedom of artistic creation/creative license as a derivation of the right to freedom of expression.

The facts of the case are unequivocal: the applicant's self-image was used in a video that the authorities considered promotional for a television series. The ruling acknowledges this when it describes that the fine was imposed "upon concluding that the applicant's images were used to promote the series,"[5] and both binding precedents reflect this, as their statement of facts indicates that the person considered that the outlet used her image without authorization "to promote a television series."

The constitutional issue, for its part, was one of abstract review: the conformity of two legal provisions with freedom of expression, of the press and of information.[6] The operative conclusion of the ruling is limited to declaring that those provisions "do establish constitutionally permissible restrictions" and that they constitute "a compatible scheme of subsequent liability" with those freedoms.[7]

In addition, the appellant argued that the challenged articles violated legal certainty because they do not define what is to be understood by "informative or journalistic purposes," which allowed the authority to subjectively determine which content falls within or outside that category. The Plenary declared those grievances inoperative as being new and specified that they "will not be addressed in this motion for review."[8]

In other words, the Court expressly declined to define the scope of "informative or journalistic purposes." Therefore, any statement contained in the judgment about which genres or content fall outside that category was not part of the question decided and cannot carry the weight of the reason that justifies the ruling.

- **Considerations that go beyond what was decided**

Within this framework, it is possible to identify several passages of the ruling that, because of their wording, their function within the reasoning, or the vote they obtained, must be read as *obiter dicta*.

[5] ADR 2808/2025, para. 136. Available at: https://www.supremacorte.gob.mx/sites/default/files/estrado_electronico_notificaciones/documento/2026-06/UT-J-0252-2026-Informacion.pdf
[6] ADR 2808/2025, paras. 139.
[7] ADR 2808/2025, paras. 163 and 164.
[8] ADR 2808/2025, paras. 31 to 34.

a) Paragraph 128. In distinguishing public interest from the interest of the public, the Plenary describes the latter as relating to content that generates cultural consumption or entertainment "but that does not necessarily" contribute to democratic deliberation. The expression is significant in the opposite sense: if entertainment does not necessarily contribute to deliberation, it is because it can. The Plenary itself thus admits that the playful nature of a work does not, by itself, exclude its public relevance.

b) Paragraph 129. *Obiter dicta* of greatest relevance:

> "Thus, for example, fiction series designed for entertainment platforms, even when inspired by real events or well-known figures, respond primarily to narrative, commercial and cultural-consumption purposes, and not to the exercise of an informative or journalistic function aimed at conveying newsworthy facts or at the social oversight of public affairs; and, to that extent, they cannot be considered to be of public interest."[9]

Three elements confirm its *obiter* nature. First, the Plenary itself introduces it as an example ("for example"). Second, it was not necessary to resolve the case: what was at stake was the use of the image in promotional material, not the content of a series. Third, it falls within the block of considerations in paragraphs 106 to 133, from whose methodology and considerations Justice Batres Guadarrama dissented.[10]

c) Paragraphs 151 to 153. These paragraphs refer to the use of the image to promote a television series. The Plenary itself describes them as an "illustrative case" and uses the formula "as a general rule." Justice Espinosa Betanzo expressly departed from these considerations. Notably, in paragraph 152, the image is described as "a narrative and marketing resource intended to encourage consumption of the content." The expression conflates precisely the two uses that this article proposes to distinguish: the narrative use - the image as part of the work - and the marketing use - the image as a hook to drive the commercialization and exploitation of the work. The fact that the Plenary mentions them together, in describing material whose promotional nature was deemed proven, confirms that it did not rule on narrative use as an autonomous category.

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[9] ADR 2808/2025, para. 129.
[10] ADR 2808/2025, operative points and vote.

d) Paragraphs 154 and 156. The first contains general considerations on the digital environment; the second extends the conclusion to the promotion of "products, audiovisual content or services" that do not deal with informative or journalistic facts. Both passages are framed in broader terms than the facts of the case and, therefore, are not part of the reason for the decision either. Even so, it is worth noting that, even in their broadest formulation, they refer to the use of the image to promote, not to the content of the work.

e) The vote on the binding precedents. The subject of P./J. 214/2026 was approved by a majority of eight votes, because Justice Ortiz Ahlf's vote affects the considerations supporting it. The subject of P./J. 213/2026—which contains the reference to "entertainment"—was approved by a majority of only six. That is, the considerations on public interest and entertainment are, of the entire ruling, those that obtained the least consensus.

- **Conclusion of this section**

The reason for the decision in ADR 2808/2025 is that Articles 87 and 231, section II, of the LFDA establish constitutionally valid restrictions, and that the non-consensual use of a person's image for profit, unconnected to a public interest, does not enjoy the reinforced protection of freedom of expression. That reason was built on a promotional use, autonomous from and external to the work. The other considerations analyzed - the reference to fiction series in paragraph 129, the "illustrative case" in paragraphs 151 to 153, and the generalizations in paragraphs 154 and 156 - are ancillary: they were formulated as examples or in broader terms than the facts of the case, they were not necessary to resolve it and, as regards entertainment, they obtained the least consensus in the ruling. In sum, the ruling contains no pronouncement whatsoever on the narrative use of the image within a work and, insofar as it did rule in an ancillary manner, it proved contradictory, as discussed below.

3. CRITICAL ANALYSIS OF THE CONSIDERATIONS OF THE RULING

Having delimited the scope of the ruling, it is worth examining some of its considerations. Although they are not part of the reason for the decision, their wording may encourage expansive readings, so it is useful to point out the inconsistencies they present, both among themselves and with respect to the standard that the Court itself elevated to binding precedent, as well as the premise underlying them.

- **“Primarily” versus “solely”: the requirement of exclusivity and contradictory considerations.**

If one compares the various passages in which the Plenary describes content that does not merit reinforced protection, it becomes apparent that the standard is not uniform. Paragraph 129 states that fiction series respond “primarily” to narrative, commercial and cultural-consumption purposes. By contrast, paragraph 127, after reviewing the *Presunto Culpable* precedent, holds that, “in the opinion of this Plenary,” the justification for the intrusion does not arise when the dissemination pursues “merely commercial, promotional or entertainment” purposes. In turn, paragraph 114 refers to intrusion “aimed solely at satisfying curiosity or morbid interest, without any identifiable contribution”; paragraph 120, to content that “is limited to satisfying curiosity, sensationalism or merely commercial interest”; and paragraphs 149 and 155, to dissemination that “adds no value whatsoever to democratic debate.” [11]

What matters is which of those standards made its way into the binding precedent. P./J. 213/2026 provides that personality rights must prevail “if the disclosed content solely satisfies curiosity, sensationalism, entertainment or a merely commercial interest,” and that the non-consensual use of a private person’s image takes precedence only when there is “a demonstrable connection with a matter of public relevance”.[12]

The binding standard, therefore, is one of exclusivity, not predominance. For a work to fall outside reinforced protection, it is not enough that its main purpose be narrative or commercial; it must solely entertain or solely pursue a commercial interest, without any identifiable contribution. And a work is hardly ever just one thing.

It is enough that there be a demonstrable connection with a matter of public relevance for the case to fall outside the exclusion and enter the realm of balancing. The “primarily” of paragraph 129 is, to that extent, incompatible with the standard the Court itself elevated to binding precedent, which confirms its ancillary nature.

[11] ADR 2808/2025, paras. 114, 120, 127, 129, 149 and 155.

[12] Thesis: P./J. 213/2026 (12a.), RIGHT TO ONE’S OWN IMAGE. ITS PROTECTION IN THE CASE OF PRIVATE PERSONS, Plenary, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Twelfth Period, published on Friday, October 30, 2026, digital record: 2032845. https://sjf2.scjn.gob.mx/detalle/tesis/2032845 (accessed on November 3, 2026).

In paragraph 127, “merely” functions as a synonym for “solely.” Thus, what is excluded from reinforced protection is dissemination whose purpose is exclusively commercial, promotional or entertainment. The problem is that, in the case of audiovisual works, such exclusivity rarely - if ever - occurs. Every work combines a narrative, creative decisions, a message and an economic investment that is expected to be recovered. A criterion whose triggering assumption never materializes offers the authority no workable guideline: either it is never applied, or it ends up being applied, in practice, as a standard of predominance - the “primarily” of paragraph 129 - that the binding precedent did not adopt.

Consider the extreme case. *The Emoji Movie* (2017) was widely criticized as a feature film made solely for advertising purposes: its plot consists largely of a tour through apps such as Candy Crush, WeChat, Just Dance, Instagram, Spotify and Dropbox, and it includes references to Crackle, a platform owned by the same company that distributed the film.[13] And yet its director presented it as a personal work: the story of a character who learns to accept himself, inspired by his own childhood.[14] Regardless of its quality or the sincerity of that claim, the work is not “solely” commercial.

If not even that work satisfies the exclusion, the exclusion is, in the case of audiovisual works, practically empty. The only way to possibly give the criterion workable content is to confine it to its original context: stand-alone promotional material external to the work, where exclusivity is indeed possible, since an advertisement may have no purpose other than to sell.

- **The false dichotomy between narrating and informing**

Some passages of the ruling appear to rest on a dichotomy: either content is narrative, commercial or entertainment, or it is informative or journalistic. That dichotomy does not exist. A documentary informs and entertains at the same time; a journalistic chronicle is built with narrative techniques; and a work of fiction may address matters of profound social, cultural, historical and, among others, educational interest. Biopic series are a particularly clear example: they recreate, with creative license, episodes of collective memory so that a society may process them and pass them on.

[13] Rizov, Vadim, “The Emoji Movie is Inside Out crossed with a Sony commercial and dunked in toxic ooze”, The A.V. Club, July 27, 2017, https://www.avclub.com/the-emoji-movie-is-inside-out-crossed-with-a-sony-comme-1798191832 (accessed on November 3, 2026).
[14] Idem.

It has always been so. Sophocles' *Antigone* is a work of fiction and, at the same time, one of the most influential reflections in the Western tradition on disobedience in the face of power; Lope de Vega's *Fuenteovejuna* dramatizes a historical uprising against the abuse of authority; and in Mexico, *Rojo Amanecer* brought to the screen, through fiction, the events of 1968 at a time when their public discussion was still uncomfortable. No one would argue that these works lack relevance for democratic coexistence because they are works of fiction or because they generated revenue.

The ruling itself, drawing on direct amparo review 3619/2015, acknowledges that the message under scrutiny is often "an amalgam" of facts and opinions, that the expression of thoughts "often needs to rely on the narration of facts," and that when both elements are present an effort must be made to separate them, and only when this is impossible should the predominant one be considered.[15] If that criterion requires a case-by-case analysis of the specific message, it is not compatible with the wholesale disqualification of an entire audiovisual genre.

- **Public interest goes beyond criticism of institutions or political figures**

It would be a mistake to read the notion of public interest as if it were exhausted solely in its facet of political speech embodied in the scrutiny of institutions or specific officials. The ruling itself, in reviewing direct amparo 6/2009, notes that public interest encompasses political speech, "but also topics that reasonably matter to community life, such as the performance of institutions, the discussion of public policies, the reporting of irregularities or relevant social phenomena, among others."[16] And, in defining public interest as opposed to the interest of the public, it includes content that contributes "to the understanding of phenomena that affect community life."[17]

The same breadth appears in legislation. The Honor Law, in Article 7, section II, deems information of public interest to be that which is useful for decision-making and the exercise of rights in a democratic society.

The notion of "relevance for democratic coexistence and participation" is, by definition, broad. Democratic life is not limited to the oversight of power; it also encompasses collective memory, cultural identity, the discussion of social phenomena such as drug trafficking, violence or corruption, and the possibility for a society to represent itself and reflect on its own history.

[15] ADR 2808/2025, paras. 81 and 82.
[16] ADR 2808/2025, para. 109.
[17] ADR 2808/2025, para. 128.

Professor Jack M. Balkin has warned that theories that center freedom of expression exclusively on the protection of the democratic process and deliberation tend to downplay the importance of non-political expression and popular culture, and has proposed, instead, that freedom of expression protect and promote a "democratic culture," which he defines as follows:

> "A democratic culture is a culture in which individuals have a fair opportunity to participate in the forms of meaning-making that constitute them as individuals. Democratic culture is about individual liberty as well as collective self-governance; it concerns each individual's ability to participate in the production and distribution of culture."[18]

A work that helps to understand how a criminal phenomenon came about, how it affected a community, or which people took part in an event of collective significance contributes to that understanding, even if it does so through dramatic devices. Limiting public interest to the strictly institutional would leave out precisely the type of expressive exercises that the Court, in its own words, considers relevant to community life.

Biopic series, unlike other fictions, take as their subject the life of a person whose trajectory placed them at the center of collective attention, whether artistic, cultural, sporting, political or even criminal. Their value lies not in exposing the privacy of the person portrayed for "mere" entertainment or monetization. It lies in explaining how that person came to occupy that place and what his or her story reveals about the society that made it possible. Narrating the rise of a popular singer, the career of an athlete or the trajectory of a figure linked to drug trafficking is a way of participating in that production of collective meaning. Such narration constitutes a social exercise through which individual authors contribute to their culture while at the same time studying, contextualizing or, at times, reassessing it.

Of course, not everything that appears in a biopic series is covered by public interest. Protection, following a balancing exercise, would extend to the passages connected with the activity or events that gave the person notoriety, not to those aspects of his or her private life that lack such connection and that could be considered gratuitous and unnecessary inclusions.

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[18] Jack M. Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society", New York University Law Review, vol. 79, no. 1, April 2004, p. 1. https://nyulawreview.org/issues/volume-79-number-1/digital-speech-and-democratic-culture/ (accessed on November 4, 2026).

That balancing must be done on a case-by-case basis, based on the specific content of the work, and not by excluding any genre wholesale. Dramatization, reconstructed dialogue and the other narrative devices of fiction do not eliminate the public relevance of the story.

4. RELATIONSHIP OF THE CRITERIA ESTABLISHED IN ADR 2808/2025 TO OTHER SUPREME COURT CRITERIA

- **ADR 3619/2015 and ADR 2661/2021**

The ruling itself offers the clearest counterpoint to an expansive reading of paragraph 129. As an example of a case in which the use of a private person's image found constitutional justification, the Plenary invokes direct amparo review 3619/2015, concerning the documentary film *Presunto Culpable*.[19] In that matter, the audiovisual work was considered to have a genuine informative purpose, aimed at exposing structural deficiencies in the criminal justice system, and the inclusion of the prosecution witness's image was valid not because of his personal notoriety, but because his participation was directly linked to the facts of public interest that the work sought to denounce.[20]

The precedent is relevant for two reasons. The first is that it confirms that an audiovisual work exhibited commercially - *Presunto Culpable* was released in movie theaters - can be a vehicle for a matter of public interest, without its for-profit distribution preventing this. The second is that the decisive criterion was the link between the person and the facts of public interest narrated, not the genre of the work or the medium through which it was disseminated. Thus, for the Court in its ratio decidendi, what matters is the demonstrable connection between the person portrayed and a matter of public relevance, which is exactly what P./J. 213/2026 requires.[21]

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[19] Supreme Court of Justice of the Nation, First Chamber, Direct amparo review 3619/2015, session of December 7, 2016, Reporting Justice: Alfredo Gutiérrez Ortiz Mena. https://www2.scjn.gob.mx/juridica/engroses/1/2015/10/2_183729_3284_firmado.pdf (accessed on November 3, 2026).

[20] ADR 2808/2025, paras. 124 to 126.

[21] Thesis P./J. 213/2026 (12a.), RIGHT TO ONE'S OWN IMAGE. ITS PROTECTION IN THE CASE OF PRIVATE PERSONS, Plenary, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Twelfth Period, published on Friday, October 30, 2026, digital record: 2032845. https://sjf2.scjn.gob.mx/detalle/tesis/2032845 (accessed on November 3, 2026).

The counterweight the ruling introduces should not be overlooked: following direct amparo review 2661/2021, the Court reiterated that it is not constitutional to consider a person a public figure merely because he or she has been charged in a criminal proceeding.[22] The criterion, however, refers to the categorization of the person, not to the public relevance of the facts: it expressly recognizes that "there is a public interest regarding criminal acts." What it requires is that the dissemination of the image be connected to that interest, which is compatible with the thesis of this article.

- **ADR 4067/2015 and AD 24/2016**

Along the same lines, the First Chamber has held that the analysis of a private person's public projection is not done wholesale, but based on the specific connection between his or her acts and the matter of public relevance. In deciding direct amparo review 4067/2015, the Chamber recognized public projection for those holding management positions in private educational institutions. It specified, however, that not all of their actions are per se of public interest. Only those directly related to the provision of the public education service are.[23] This is the same logic adopted by P./J. 213/2026 when it requires a demonstrable connection with a matter of public relevance. Applied to a docuseries, it means that the portrayal of a real person is justified to the extent that it is linked to the facts of public relevance that the work narrates, regardless of the format or genre in which it is presented.

Direct amparo 24/2016 is even more telling, because it expressly refers to entertainment. The First Chamber held that, in the case of "entertainment" or "show business" journalism, there is a public interest in disseminating without consent the image of private persons with public projection when it relates to their professional activity. In that specific case, the Chamber denied protection to the publication because there was no connection whatsoever between the content of the images and that activity.[24] The Court, therefore, had already recognized that the entertainment nature of content does not, by itself, exclude public interest.

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[22] ADR 2808/2025, paras. 121 to 123.

[23] Thesis: PRIVATE PERSONS WITH PUBLIC PROJECTION. THOSE WHO HOLD MANAGEMENT POSITIONS IN PRIVATE EDUCATIONAL INSTITUTIONS ARE SUCH WHEN THEIR ACTS OR OMISSIONS ARE DIRECTLY RELATED TO THE PROVISION OF THAT PUBLIC SERVICE, First Chamber, Gaceta del Semanario Judicial de la Federación (Gazette of the Official Federal Case-Law Reporter), Tenth Period, Book 44, July 2017, Volume I, p. 62, digital record: 2014694. Available at: https://sjf2.scjn.gob.mx/detalle/tesis/2014694 (accessed on November 3, 2026).

[24] Supreme Court of Justice of the Nation, First Chamber, Direct amparo 24/2016, session of December 6, 2017, Reporting Justice: Arturo Zaldívar Lelo de Larrea. https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2021-10/AD%2024-2016.pdf (accessed on November 3, 2026). See also Supreme Court of Justice of the Nation, Press Release No. 193/2017, December 6, 2017. Available at: https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=4638

What is decisive is the connection between the image and a matter of public relevance. That criterion is incompatible with a reading of paragraph 129 that disqualifies fiction series wholesale. Below is an excerpt from the judgment in question, included for its argumentative relevance:

> "Moreover, this Supreme Court is not unaware of the existence of entertainment publications and programs in which the information disseminated in many cases refers to the lives of private persons with public projection, such as actors, musicians, film directors, producers, television hosts, athletes, etc. In this regard, this First Chamber wishes to be very emphatic in pointing out with complete clarity that entertainment journalism is protected by freedom of expression. Consequently, the constitutional doctrine on the public interest in disseminating information about private persons with public projection must also be adapted to this type of news coverage." [25]

We insist: the Court has repeatedly been clear in this regard: constitutional protection under the right to freedom of expression cannot be denied to entire genres of expression without a case-by-case analysis.

5. REAL INFORMATION VS. FICTION: FREEDOM OF ARTISTIC CREATION

The ruling assesses the use of the image with a parameter designed for information. That is, if the content conveys newsworthy facts related to criticism of government institutions, corruption or the like, then it is protected by freedom of expression. There must be perfect clarity as to what is being criticized.

That parameter is appropriate for journalism, but not for artistic creation, which has its own logic. The artistic expressions of authors question meanings, reassess inherited ideas and confront both personal systems and social structures, proposing paradigmatic visions that may be disruptive or affirmative and not necessarily institutional in their approach. As the phrase attributed to César A. Cruz sums it up: *"Art should comfort the disturbed and disturb the comfortable."*

[25] Idem.

In other words, art is not always clear, nor does it have to be: ambiguity has its place and is, indeed, one of the reasons why cultures return again and again to their foundational stories, to study them and progressively derive from them a greater understanding of their place in the culture that produced them. Many of those stories operate as archetypes whose meaning is not fully understood at the moment the symbol was fixed, but is revealed over time; requiring a work to have the clarity of a news story would amount to denying it precisely that dimension.

As the father of comparative religion, Joseph Campbell, so beautifully put it:

> "The unconscious sends all sorts of vapors, odd beings, terrors, and deluding images up into the mind - whether in dream, broad daylight, or insanity; for the human kingdom, beneath the floor of the comparatively neat little dwelling that we call our consciousness, goes down into unsuspected Aladdin caves." [26]

Thus, a work of fiction does not seek to reproduce news events in the way a newspaper, for example, does; it seeks to express, interpret and represent. That is why various legal systems have recognized artistic creation as a specific manifestation of freedom of expression, with its own content and parameter of analysis.

- **Express recognition in other systems**

The most developed example is the Spanish one. Article 20.1.b) of the Constitution recognizes the right "to literary, artistic, scientific and technical production and creation," and the Constitutional Court, in judgment 51/2008 (*Jardín de Villa Valeria*), held that the express constitutionalization of that right grants it "an autonomous content that, without excluding it, goes beyond freedom of expression.[27]

[26] Joseph Campbell, El héroe de las mil caras. Psicoanálisis del mito, trans. Luisa Josefina Hernández, Mexico, Fondo de Cultura Económica, 1959 (first reprint, 1972), Prologue, "El mito y el sueño", p. 12. https://dn721805.ca.archive.org/0/items/ElHeroeDeLasMilCaras/CampbellJoseph-ElHeroeDeLasMilCaras241p.pdf (accessed on November 4, 2026). Own translation.

[27] Constitutional Court of Spain, Second Chamber, Judgment 51/2008 of April 14, 2008, amparo appeal 5351-2004, Reporting Justice: Ramón Rodríguez Arribas, BOE no. 117, May 14, 2008, legal ground 5. https://www.boe.es/diario_boe/txt.php?id=BOE-T-2008-8461 (accessed on November 4, 2026).

In Colombia, Article 71 of the Political Constitution provides that the pursuit of knowledge and artistic expression are free, and the Constitutional Court has treated freedom of artistic expression as a fundamental right of immediate application.[28]

The Constitution of the Portuguese Republic declares intellectual, artistic and scientific creation to be free, and specifies that this freedom includes the right to produce and disseminate scientific, literary or artistic works, including the legal protection of copyright.[29]

The German Basic Law provides that art and science, research and teaching are free, in a paragraph separate from the one recognizing freedom of expression in general.[30] And the Brazilian Constitution guarantees the free expression of intellectual, artistic, scientific and communication activity, regardless of censorship or license, in the same provision that, in its following subsection, protects the privacy, private life, honor and image of persons.[31]

That recognition is not merely declaratory: it has concrete consequences for how works inspired by real events and people are analyzed, which are developed in the following section based on the creative licenses that courts have accepted.

- **Mexico: a right implicit in freedom of expression and in access to culture**

The Mexican constitutional text does not expressly recognize an autonomous right to artistic creation. However the right is derived from various sources. Articles 6 and 7 of the CPEUM protect the expression of ideas without distinguishing the form in which they are expressed. Article 13 of the American Convention on Human Rights expressly protects the freedom to impart information and ideas "either orally, in writing, in print, in the form of art."[32]

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[28] Constitutional Court of Colombia, Judgment T-104/96. https://www.corteconstitucional.gov.co/relatoria/1996/T-104-96.htm (accessed on November 3, 2026).

[29] Constitution of the Portuguese Republic, Article 42: "1. É livre a criação intelectual, artística e científica. 2. Esta liberdade compreende o direito à invenção, produção e divulgação da obra científica, literária ou artística, incluindo a protecção legal dos direitos de autor." https://www.togai.pt/legislacao/constituicao-republica-portuguesa/artigo-42 (accessed on November 3, 2026).

[30] Basic Law for the Federal Republic of Germany (Grundgesetz), Article 5, paragraph 3: "Kunst und Wissenschaft, Forschung und Lehre sind frei." https://www.gesetze-im-internet.de/gg/art_5.html (accessed on November 3, 2026).

[31] Constitution of the Federative Republic of Brazil of 1988, Article 5, subsection IX: "é livre a expressão da atividade intelectual, artística, científica e de comunicação, independentemente de censura ou licença"; see also subsection X of the same article. https://normas.leg.br/?urn=urn:lex:br:federal:constituicao:1988-10-05;1988!art5 (accessed on November 3, 2026).

[32] American Convention on Human Rights (Pact of San José), adopted in San José, Costa Rica, on November 22, 1969, published in the Official Gazette of the Federation on May 7, 1981, Article 13.1: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." https://www.oas.org/juridico/spanish/Tratados/b-32.html (accessed on November 4, 2026).

Similarly, Article 27 of the Universal Declaration of Human Rights recognizes everyone's right freely to participate in the cultural life of the community and to enjoy the arts, as well as to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.[33]

Article 4 of the CPEUM recognizes the right of access to culture, and Article 15 of the International Covenant on Economic, Social and Cultural Rights requires respect for the freedom indispensable for creative activity.[34] At the statutory level, the General Law on Culture and Cultural Rights lists "respect for creative freedom and cultural manifestations" as a guiding principle of the Mexican State's cultural policy (Article 7, section I) and recognizes everyone's right to "participate actively and creatively in culture" (Article 11, section V), which confirms that the exercise of creativity is, in itself, a protected right.[35]

6. INTERNATIONAL PRECEDENTS: CONSENT AND CREATIVE LICENSE

If freedom of artistic creation is, as has been seen, a specific manifestation of freedom of expression, creative licenses are its applied content: the margin the author has to dramatize, reconstruct and reinterpret reality without being subject to the standard of truthfulness applicable to information. Legal scholarship itself has noted that the protection of artistic expression "is structured around the distinction between fiction and reality".[36]

Comparative law shows that international courts recognize the creative licenses inherent in works inspired by real events and people, and resolve conflicts with personality rights through balancing, not by excluding the genre.

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[33] Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in resolution 217 A (III) of December 10, 1948, Article 27. https://www.un.org/es/about-us/universal-declaration-of-human-rights (accessed on November 4, 2026).

[34] International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in resolution 2200 A (XXI) of December 16, 1966, published in the Official Gazette of the Federation on May 12, 1981, Article 15.3: "The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity." https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights (accessed on November 4, 2026).

[35] General Law on Culture and Cultural Rights, published in the Official Gazette of the Federation on June 19, 2017, last amendment published on January 15, 2026, Articles 7, section I, and 11, section V. https://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC.pdf (accessed on November 4, 2026).

[36] Joaquín Urías Martínez, "La creación artística como discurso protegido: experiencias comparadas y posibilidades españolas", Teoría y Realidad Constitucional, no. 46, 2020, pp. 343-370, abstract, DOI: https://doi.org/10.5944/trc.46.2020.29115 (accessed on November 4, 2026).

Recognizing freedom of artistic creation makes it possible to assess the work as a work, not as a mere vehicle for ingesting news content. The work involves a dramatic recreation and not the univocal reproduction of facts in the form of news. A story allows creative license in reconstructing dialogue, scenes and relationships; and it shifts the analysis from the standard of truthfulness to that of the existence of a real and serious harm to the rights of the person portrayed.

- **Spain: the *Fariña* and *Jardín de Villa Valeria* cases**

The Spanish Supreme Court, in judgment 1761/2025 of December 2, 2025, decided the claim of a person who considered his honor, privacy and self-image affected by his portrayal in the series *Fariña*, inspired by real events of Galician drug trafficking and distributed through a *streaming* platform.[37] The Court delimited freedom of artistic creation as an autonomous right, although not immune from review when it conflicts with personality rights; recognized that in dramatizing real events and characters authors use creative license; and concluded that the challenged scenes - even though they involved sexual content - did not violate the plaintiff's rights, because they were narratively incidental and the average viewer perceived them as a dramatic recreation and not as an account with documentary pretensions.

The case is especially illustrative because of its similarity to the Mexican debate: a fiction series, about drug trafficking, distributed by a pay platform. Far from considering it devoid of public interest because of its entertainment nature, the Court analyzed it as a protected work and balanced the rights at stake.

The judgment is not an isolated one. The Constitutional Court had already adopted that approach in judgment 51/2008 (*Jardín de Villa Valeria*). In that novel, published in 1996, Manuel Vicent identified by name a real, deceased person and, in a brief passage, attributed to him various phobias and conduct with sexual connotations. His widow sued the author and the publisher for intrusion into her husband's honor and privacy. In denying amparo the Constitutional Court held that the criteria of truthfulness and public relevance applicable to freedom of information cannot be transferred to literary creation, since it protects "the creation of a fictional universe that may take data from reality as points of reference" (a creative license), and that the passage did not use offensive phrases or phrases detrimental to the reputation of others.[38]

[37] Supreme Court of Spain, Judgment 1761/2025 of December 2, 2025, available in the case-law search engine of the Spanish Judiciary: https://www.poderjudicial.es/search/index.jsp (accessed on November 3, 2026).
[38] Constitutional Court of Spain, Second Chamber, Judgment 51/2008 of April 14, 2008, background 2 and legal grounds 5 and 7. https://www.boe.es/diario_boe/txt.php?id=BOE-T-2008-8461 (accessed on November 4, 2026).

- **Colombia**

In judgment T-628/17, the Constitutional Court analyzed the film *Mariposas verdes*, a work of fiction inspired by the case of a student who took his own life after suffering school bullying. The father alleged that the main character reproduced traits of his son and exploited his image without authorization.

The Court denied the tutela action, holding as follows:

> "The Chamber did not find the infringement of the right to privacy proven because (i) the plaintiff did not identify the circumstances of his privacy that were revealed in the work; (ii**) the film is a work of fiction inspired by real events that did not purport to give a faithful account of events that occurred in real life** and (iii) the circumstances that coincide with the story of the deceased young man are public knowledge." [39]

This judgment is particularly useful because the Court denied the *tutela* action, among other reasons, because the film "did not purport to give a faithful account of events that occurred in real life." That is, it accepted that a work of fiction may take the story of a real person as its starting point and depart from it - altering circumstances, reconstructing characters, reinterpreting the facts - without that distance from reality constituting, in itself, an infringement of his or her rights. Far from aggravating the intrusion, creative license operates here as a mitigating factor: precisely because the work does not present itself as a faithful account, it cannot be measured against the standard of truthfulness applicable to information.

In judgment T-025/22, concerning the documentary *Son of Sodom*, the Constitutional Court extended the recognition of creative license even to the genre that would seem closest to information. It held that documentary film is characterized by giving a "creative treatment to reality": the artist observes the facts and builds an audiovisual record of them, but the images and sounds "are ordered, fragmented or modified in such a way that there is not a mere reproduction of events, but a discourse about them." In the Court's own words, documentary "is not intended to accumulate events and report them, but to show the way in which the artist understands reality.[40]

[39] Constitutional Court of Colombia, Fifth Review Chamber, Judgment T-628/17, Reporting Justice Gloria Stella Ortiz Delgado, October 9, 2017. https://www.corteconstitucional.gov.co/relatoria/2017/T-628-17.htm (accessed on November 3, 2026).
[40] Constitutional Court of Colombia, Ninth Review Chamber, Judgment T-025/22, Reporting Justice Alberto Rojas Ríos, February 1, 2022. https://www.corteconstitucional.gov.co/relatoria/2022/T-025-22.htm (accessed on November 3, 2026).

If even documentary enjoys that margin to select, order and reinterpret what happened, all the more so does fiction inspired by real events. Therefore, when what is claimed is not the dissemination of false facts but disagreement with the way in which the work presents a person, there is no infringement of his or her image: that disagreement falls, precisely, on the author's creative license.

The Constitutional Court confirmed and took this criterion further in judgment SU-334/26, issued by the Full Chamber on October 14, 2026, concerning the film *Noviembre*, a work of fiction about the siege and retaking of the Palace of Justice in 1985. The relatives of former Justice Manuel Gaona Cruz, who was kidnapped and murdered during those events, filed a *tutela* action over a scene in which the character of a State Councilor rules out the justice as an emissary to the Military Forces because, according to her, he is "thick as thieves with these terrorists." The lower-court judges had ordered, among other measures, the deletion of that line.

The Full Chamber analyzed the film and its promotional pieces separately. Regarding the work, it held that, for an average viewer, the scene was not interpreted as a factual accusation, but as fictional dialogue, so the burdens of truthfulness and impartiality were not applicable. And it added a statement that constitutes, perhaps, the clearest formulation of creative license in Colombian case law:

> '[T]he Political Constitution allows productions inspired by or based on real events to develop stories beyond reality, through interpretations, conjectures and representations born of the author's imagination, which do not bear a faithful relationship to the facts reconstructed.' [41]

Consequently, it reversed the order to delete the scene, considering that works of art constitute an 'inseparable unit' and that modifying a fiction film 'constitutes a form of censorship.'[42]

Protection was granted only with respect to the advertising pieces that presented the film as the 'truth' of what happened. The Court specified that, unlike the film, those pieces were not protected by freedom of artistic expression and were subject to other burdens, such as the prohibition of misleading advertising.[43]

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[41] Constitutional Court of Colombia, Full Chamber, Judgment SU-334/26, Reporting Justice Paola Andrea Meneses Mosquera, File T-11.944.807, October 14, 2026, in Press Release 32, October 14 and 15, 2026, p. 13. https://www.corteconstitucional.gov.co/comunicados/comunicado-32-octubre-14-y-15-de-2026.pdf (accessed on November 3, 2026).

[42] Ibidem, p. 14.

[43] Ibidem, p. 13.

The precedent thus draws the following line: the work, as an exercise of freedom of artistic creation, enjoys reinforced protection and cannot be altered by judges; its promotion, by contrast, is a different object, subject to different rules. It should be noted that the reason the advertising was found harmful was that it misled as to the nature of the work, and not the commercial exploitation of the image. What the precedent confirms is that work and promotion are not to be confused, and that the defects of the latter do not compromise the protection of the former.

- **Other systems**

In Brazil, Article 20 of the Civil Code allowed a person to prohibit, at his or her request, the use of his or her image when it affected his or her honor or "was intended for commercial purposes." In deciding Direct Action of Unconstitutionality 4815, the Federal Supreme Court unanimously upheld the request made in the direct action to give Articles 20 and 21 of the Civil Code an interpretation in conformity with the Constitution, without reduction of text, in order to declare, in accordance with the fundamental rights to freedom of thought and expression, of artistic creation and of scientific production, that the consent of the biographed person is not required for literary or audiovisual biographical works, and that the authorization of persons portrayed as secondary characters (or of their relatives, in the case of deceased persons) is likewise unnecessary.[44]

In this case, the Federal Supreme Court resolved the tension between the person's image and the work from the standpoint of freedom of artistic creation. Requiring the consent of the biographed person would amount to leaving in his or her hands the decision as to whether his or her story may be told and how it should be told, that is, subordinating creation to the approval of its protagonist.

Along the same lines, the Brazilian Superior Court of Justice, in deciding REsp 1.454.016-SP (*Pelé Eterno*), recognized the prevalence of the creative licenses inherent in biographical works; and in the United States, precedents such as *Hicks v. Casablanca Records* (1978), *Montgomery v. Montgomery* (2001) and *Tyne v. Time Warner* (2005) have held that biographical creation prevails over the so-called *publicity rights* of the person portrayed.

[44] Supremo Tribunal Federal (Brazil), Plenary, Ação Direta de Inconstitucionalidade 4815/DF, Reporting Justice: Cármen Lúcia, decided on June 10, 2015, acórdão published in the DJ on February 1, 2016. Own translation. The original text of the decision reads: "O Tribunal, por unanimidade e nos termos do voto da Relatora, julgou procedente o pedido formulado na ação direta para dar interpretação conforme à Constituição aos artigos 20 e 21 do Código Civil, sem redução de texto, para, em consonância com os direitos fundamentais à liberdade de pensamento e de sua expressão, de criação artística, produção científica, declarar inexigível o consentimento de pessoa biografada relativamente a obras biográficas literárias ou audiovisuais, sendo por igual desnecessária autorização de pessoas retratadas como coadjuvantes (ou de seus familiares, em caso de pessoas falecidas)." https://portal.stf.jus.br/peticaoInicial/verPeticaoInicial.asp?base=ADI&numProcesso=4815 (accessed on November 3, 2026).

None of these courts granted the creator absolute immunity. All of them subjected the work to a balancing test. But all of them started from a premise that an expansive reading of paragraph 129 would deny: that fiction inspired by real events is a form of expression protected by creative license, whose entertainment nature does not, by itself, deprive it of public relevance.

- **Back to Mexico: freedom of artistic creation as a balancing parameter**

In light of the foregoing, and returning to the Mexican context, let us recap. Article 4 of the CPEUM mandates the promotion of culture "with full respect for creative freedom"; Article 19.2 of the International Covenant on Civil and Political Rights and Article 13 of the American Convention protect the dissemination of ideas "in print, in the form of art"; and Article 3 of the General Law on Culture and Cultural Rights recognizes the right to participate in cultural manifestations "actively and creatively." Hence, the State must guarantee creative freedom and may only limit it through balancing against other fundamental rights.

That freedom is exercised when there is a work, that is, an "original creation" within the meaning of Article 3 of the LFDA. Originality implies a transformation of reality to give rise to a new fictional universe, and generates a fictional pact with the audience, which accepts the work as real while knowing that it is, to a greater or lesser extent, invented—Coleridge's "willing suspension of disbelief." Therefore, the margin of tolerance toward fiction must be broadened. The fact that the people portrayed are recognizable does not require excluding them; it requires respecting their rights under the Honor Law: not unnecessarily revealing their private lives, not subjecting them to humiliation, and not using their image without connection to the story.

The decisive criterion is the connection between what is created and what is conveyed: how necessary it is to portray a given person, dialogue or scene to communicate the message of the work, following the same logic as the "demonstrable connection" of P./J. 213/2026. Opposite necessity stands "gratuitousness," that is, what lacks any connection with the message. But in the artistic realm this distinction is especially difficult: for the author nothing is gratuitous, and the subjectivity of the creative process makes it impossible to determine from the outside what was indispensable. Characterizing a passage as gratuitous therefore requires particular caution.

In sum, freedom of artistic creation, in its creative-license dimension, does not protect the mere narration of truthful facts, but the process of creating a work, from which a new reality emerges, distinct from the empirical one, as well as its dissemination, in which the general interest is also present.

7. THE AMENDMENT TO ARTICLE 87 OF THE LFDA AND ITS IMPACT ON PENDING MATTERS

In addition to the doctrine set out above regarding freedom of artistic creation and creative license, there is another argument that, together with it, should give producers and artists greater certainty to express themselves: the 2026 amendment to Article 87 of the LFDA and its application to matters still pending.

- **The new text of Article 87**

On May 14, 2026, the amendment to the LFDA concerning performing artists was published in the Official Gazette of the Federation, and it entered into force the following day. The amendment substantially modified the subjective scope of Article 87: whereas the previous text protected the portrait of "a person," the current text protects the image, including the voice, of "performing artists, as well as their characters."

Since May 15, 2026, athletes, journalists, academics or any person who does not qualify as a performing artist fall outside the scope of protection of this provision. This does not leave them defenseless - they retain the civil route and the protection of their personality rights - but it does remove their case from the LFDA's administrative sanctioning regime.

- **Pending matters: retroactive application in favor of the individual**

The amendment has an immediate consequence for proceedings that began under the previous text and have not yet been finally resolved. The Supreme Court has held that administrative sanctioning law and criminal law are manifestations of the State's punitive power, so it is valid to prudently resort to criminal-law guarantees to build the principles applicable to administrative sanctions.[45] Among those guarantees is the retroactive application of a subsequent rule that is more favorable.

[45] Binding precedent P./J. 99/2006, with the heading: "ADMINISTRATIVE SANCTIONING LAW. IN ORDER TO BUILD ITS OWN CONSTITUTIONAL PRINCIPLES, IT IS VALID TO PRUDENTLY RESORT TO THE GUARANTEE-BASED TECHNIQUES OF CRIMINAL LAW, SINCE BOTH ARE MANIFESTATIONS OF THE STATE'S PUNITIVE POWER.", Plenary, Semanario Judicial de la Federación y su Gaceta (Official Federal Case-Law Reporter and its Gazette), Ninth Period, Volume XXIV, August 2006, p. 1565, digital record 174488. See also thesis 1a. XXVII/2007, with the heading: "TAX INFRINGEMENTS ARE GOVERNED BY THE PRINCIPLES OF ADMINISTRATIVE SANCTIONING LAW AND BY THE GUARANTEES OF CRIMINAL LAW, INSOFAR AS THEY ARE APPLICABLE.", First Chamber, Semanario Judicial de la Federación y su Gaceta (Official Federal Case-Law Reporter and its Gazette), Ninth Period, Volume XXV, February 2007, p. 652, digital record 173256.

The starting point is Article 14 of the CPEUM. The prohibition of retroactivity is intended to prevent a subsequent law from harming the individual, not to deprive the individual of the benefits of a subsequent, more lenient rule; hence, interpreted a contrario sensu, the provision allows the law to be given retroactive effect when it causes no harm.[46] Decades ago, the Supreme Court extended that principle to tax infringements, considering it reasonable for the more lenient law to be applied retroactively in favor of the offender, absent an unequivocal provision to the contrary.[47] And the Second Chamber consolidated it in binding precedent: since fines are similar in nature to penalties, the retroactive application of rules that benefit the individual conforms to Article 14 of the CPEUM because, as they are punishments imposed by the State, "the greatest fairness must be sought in their imposition."[48]

Nor can an alleged vested right of the authority or of the complainant be raised against the application of the new rule. Under the theory of vested rights and expectations of rights, which has guided the interpretation of the guarantee of non-retroactivity, a vested right is one that has already become part of the person's estate, whereas an expectation is a mere hope that a specific legal situation will materialize under the legislation in force at a given time.[49] As long as the sanctioning decision is not final and its validity remains sub judice, those seeking to uphold it have, at most, an expectation that the conduct will be sanctioned under the previous text, which has not become part of their estate and which yields to the subsequent, more favorable rule.

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[46] Binding precedent thesis 923, with the heading: "RETROACTIVITY OF THE LAW.", Appendix to the Semanario Judicial de la Federación (Official Federal Case-Law Reporter) 1917-1954, Volume VI, p. 1720; and thesis with the heading: "RETROACTIVITY.", Second Chamber, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Fifth Period, Volume LVIII, p. 1691, digital record 330855.

[47] Thesis with the heading: "RETROACTIVITY OF THE MORE LENIENT TAX LAW.", Auxiliary Chamber, Semanario Judicial de la Federación (Official Federal Case-Law Reporter), Fifth Period, Volume CXXV, p. 1643, digital record 803833.

[48] Binding precedent 2a./J. 8/98, with the heading: "TAX FINES. RULES THAT ARE BENEFICIAL TO THE INDIVIDUAL MUST BE APPLIED RETROACTIVELY.", Second Chamber, Semanario Judicial de la Federación y su Gaceta (Official Federal Case-Law Reporter and its Gazette), Ninth Period, Volume VII, March 1998, p. 333, digital record 196642.

[49] Thesis with the heading: "RETROACTIVITY, THEORIES OF.", Plenary, digital record 257483.

For the principle to operate, two requirements suffice: a succession of rules - that the subsequent rule has repealed, amended or narrowed the previous one - and that the subsequent rule be more beneficial to the individual. Moreover, the benefit is not limited to cases in which the amendment directly reduces the penalty; it also applies when the offense disappears or the infringing conduct is modified since, as the First Chamber has held, if the legislature considers that an act no longer warrants a penalty, "it is not valid for the public authority to insist on demanding enforcement of the penalty as it had been imposed, for an act that no longer warrants it."[50] The situation would be different if the amendment had aggravated the infringement, in which case its retroactive application would be prohibited; that is not the case, since current Article 87 does not aggravate, but rather narrows, the sanctionable conduct.

The Second Chamber has specified that this principle also operates when the new provision ceases to consider the sanctioned conduct unlawful, provided that the more favorable rule is issued or enters into force when the corresponding decision has not yet been issued.[51] This is precisely what happens with the amendment to Article 87: the sanctioning rule of Article 231, section II, was not amended; rather, the provision defining the scope of the unlawful conduct was, by narrowing the subjective scope of protection. If the person whose image was used is not a performing artist, the conduct ceased to be sanctionable under the LFDA.

Moreover, the decree amending the LFDA contains no transitional provision ordering the previous text to be applied to pending administrative sanctioning proceedings: its only provision on succession of rules refers to conciliation and arbitration proceedings. Under these conditions, the bodies hearing administrative proceedings or annulment suits pending resolution must apply the more favorable rule, regardless of whether the conduct took place while the previous text was in force.

[50] Thesis 1a. CI/2004, with the heading: "INCIDENTAL PROCEEDING FOR TRANSLATION OF THE OFFENSE AND ADJUSTMENT OF THE PENALTY. IT CONSTITUTES A CONSTITUTIONALLY PROTECTED RIGHT.", First Chamber, Semanario Judicial de la Federación y su Gaceta (Official Federal Case-Law Reporter and its Gazette), Ninth Period, Volume XX, December 2004, p. 366, digital record 179890.

[51] Binding precedent 2a./J. 22/2013 (10a.), with the heading: "PRINCIPLE OF RETROACTIVITY OF THE MORE FAVORABLE SUBSEQUENT RULE. IT MUST BE APPLIED FOR THE BENEFIT OF THE INDIVIDUAL WHEN THE NEW PROVISION CEASES TO CONSIDER UNLAWFUL THE CONDUCT SANCTIONED WITH A TAX FINE.", Second Chamber, Semanario Judicial de la Federación y su Gaceta (Official Federal Case-Law Reporter and its Gazette), Tenth Period, Book XIX, April 2013, Volume 2, p. 1321, digital record 2003349.

Applying the current text does not, therefore, imply a discretionary choice of the most convenient rule, but rather adherence to the constitutional and case-law regime governing the succession of rules in sanctioning matters: as long as there is no final decision, the subsequent provision that, by narrowing the infringement, is less burdensome for the individual must prevail.

The practical effect of all the foregoing for artists and audiovisual producers is clear. In administrative infringement proceedings and annulment suits that do not yet have a final decision, the authority must first verify whether the person whose image was used without authorization is a performing artist. If, instead, it is any other type of individual, the conduct no longer falls within the scope of current Article 87 and, by retroactive application of the more favorable rule, the penalty provided for in Article 231, section II, of the LFDA cannot be upheld. In other words, the foregoing considerations, together with the comparative-law precedents, should encourage artistic creation in all its forms, without discrimination by genre.

8. CONCLUSION

ADR 2808/2025 resolved a specific issue, namely, the constitutionality of requiring a person's consent to use his or her image in material that the authorities considered promotional for a television series. That is the reason for its decision. The considerations on fiction series are ancillary: they were formulated as an example, obtained less consensus than the rest of the ruling, and use a standard different from the one the Court itself elevated to binding precedent, which requires that content solely entertain or pursue a commercial interest in order to be excluded from reinforced protection.

Promoting is not narrating. When a person's image is used outside the work, as a hook to sell a product, the precedent applies. When the person appears within the work, as part of a narrative about events relevant to community life, the ruling offers no answer and the conflict must be resolved through a balancing that considers freedom of artistic creation, creative license, the public interest of the events narrated and the actual harm to the rights of the person portrayed.

Every collision between freedom of expression, artistic creation and intellectual property, on the one hand, and personality rights, on the other, requires balancing. But the international trend clearly recognizes creative license as part of the protected content of freedom of creation.

Added to this, in pending matters, is the amendment to Article 87 of the LFDA, whose retroactive application in favor of the individual derives from the pro persona principle and from the punitive nature of sanctioning proceedings.

In that balancing, the determining element is the connection between what is created and what is conveyed: how necessary it is to portray a person, a dialogue or a scene to communicate the message of the work. Necessity justifies inclusion; gratuitousness—what lacks connection with the message—does not. And since, in the creative process, the author perceives all the elements used as indispensable, and since every original work transforms reality under a fictional pact with its audience, the margin of tolerance toward fiction inspired by real events must be broader than that required of information.

The courts hearing these matters have before them a historic opportunity: to clarify the scope of a precedent that, read carefully, leaves intact the space for fiction inspired by reality, and to consolidate in Mexico the recognition of freedom of artistic creation and creative license as a manifestation of freedom of expression in its own right.

It is worth noting, as a final comment, that nullity suit 2405/25-EPI-01-12, decided by the SEPI on October 23, 2026 and concerning the use of a person's image in a fiction series inspired by real events, would have been an opportunity for the Mexican authorities to align themselves with the precedents set out here. However, the Chamber declared the nullity on a different ground, without ruling on freedom of artistic creation, creative licenses or the retroactive application, in favor of individuals, of the now-amended Article 87 of the LFDA. We therefore continue to await the materialization of such alignment with international criteria on the subject.

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II. Legislation and international instruments

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