

# *Rethinking the Hierarchy of Rights in International Copyright Law*

*Saleh Al-Sharieh*

The enjoyment of arts and the benefits of science is as much intrinsic to human dignity as is the protection of author's moral and material interests resulting from their intellectual works. Article 15(1) of the International Covenant on Economic, Social and Cultural Rights, and similarly Article 27 of the Universal Declaration of Human Rights, recognizes the human right of everyone: "(a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has interpreted the right to take part in cultural life to contain three components: "(a) participation in, (b) access to, and (c) contribution to cultural life." The CESCR has also interpreted authors' moral and material interests in Article 15(1)(c) to cover the rights of the authors to be (or not to be) associated with the works, to object to the works' distortion or derogatory modification and to derive from them economic benefits sufficient to achieve an adequate standard of living. The human rights of both authors and users are interdependent and thus must be balanced. This requirement entails recognizing their: 1) limited nature; 2) non-hierarchical existence; and 3) interrelation and indivisibility from all other human rights.

International copyright law plays a role in the implementation of both authors' moral and material interests by means of copyright, on the one hand, and users' human right to take part in culture by means of copyright exceptions and limitations, on the other. It is therefore no coincidence that the preamble of the Marrakesh Treaty emphasizes "the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits."

This paper makes two arguments. First, international copyright law establishes a set of hierarchies both between and within the different human rights of authors and users of copyrighted works, particularly: 1) national authors' and foreign authors' rights; 2) authors' and users' rights; 3) optional and compulsory users' rights; and 4) economic and moral authors' rights. This situation upsets the human rights principles of non-discrimination and balance, which are both central to the structure and legitimacy of the international copyright system. Second, rethinking these hierarchies is necessary to align international copyright rules with international human rights law, and this might be achieved by incorporating a human rights compliance objective in international copyright law. The objective derives its normative support from international human rights law and should act as the ground rule on which implementing provisions can rely and according to which states would need to devise national copyright laws.