

Rethinking the Hierarchies of Rights in International Copyright Law

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Objectives

- Highlighting the hierarchies of rights in international copyright law
- Discussing the impact of the hierarchies on the internal and external coherence of international copyright law
- Proposing a human rights compliance objective to alleviate the impact of the hierarchies (ground rule)

The human rights

- The enjoyment of arts and the benefits of science is as much intrinsic to human dignity as is the protection of author' moral and material interests (ICESCR, art 15; UDHR, art 27)
- Authors have moral and material interests
- Users have the right to take part in cultural life

The human rights balance

- Authors' moral and material interests are interrelated and interdependent
- Their human rights balance means they are limited, non-hierarchical, indivisible from all human rights

International copyright law

- A convenient model to operationalize authors' moral and material interests, on the one hand, and users' right to take part in cultural life
- It provides copyright subject to exceptions and limitations

The hierarchical structure of international copyright law

- The hierarchy between authors' moral and economic rights
- The hierarchy between national and foreign authors' rights
- The hierarchy between authors' rights and users' right to take part in cultural life
- The hierarchy between copyright exceptions

Coherence of a legal system

- It means “fitting together of all components of the legal system” (Soriano, 2003, p 296-297)
- Coherence makes the legal rules of the system persuasive and accepted
- Coherence requires synergy between the rules and the principles in the legal system (rationality requirement)

Coherence of a legal system (Cont.)

- Coherence requires that “like cases should be treated alike” (fairness requirement)
- Coherence can be internal (e.g. coherence within international copyright law) and external (e.g. coherence of international copyright law with international human rights law)

Hierarchies of rights' impact on the coherence of international copyright law

- On the internal coherence: they challenge the systems' founding principles
 - The challenge to the human dignity basis of international copyright law
 - The challenge to the traditional principle of copyright law balance

Hierarchies of rights' impact on the coherence of international copyright law (Cont.)

- On the external coherence: the hierarchies challenge the external coherence of the system with international human rights law
 - At the level of the implementation of authors' and moral interests and users' right to take part in cultural life
 - At the level of striking “a human rights balance” between them

The ground rule for human rights compliance

- Content of the rule: recognition of the role of international copyright law in the operationalization of authors' moral and material interests, on the one hand, and users' right to take part in cultural life, on the other.
- Normative support of the rule: the supremacy of human rights

The ground rule for human rights compliance (Cont.)

- Means of incorporation in international copyright law
 - TRIPS amendment
 - TRIPS interpretation
 - A new WIPO instrument

Thank you