Human Rights, the Rights of Creators, and Copyright Law

Introduction
Copyright law is often seen as an abstract concept, but for our artists, writers, and many other types of creators, it is the foundation of their creative practice. However, because of its abstraction, copyright can be difficult to grasp.

By looking at international law on human rights, a clear correlation can be found between creators' rights and copyright law. This relationship not only makes copyright less abstract, but also demonstrates its vital importance to creators.

Introducing the ICESCR
The International Covenant on Economic, Social and Cultural Rights (or ICESCR) is a United Nations treaty that was adopted by the UN General Assembly on 16 December 1966. Its origins stem from the establishment of the UN after World War II, when a declaration on human rights was under consideration.

The first result of that work was the Universal Declaration of Human Rights, which addresses general principles of human rights. The ICESCR is less well known but perhaps more important because it describes binding human rights commitments. New Zealand became a signatory to it in 1978, and the government is obliged to report regularly on its compliance with ICESCR to the Committee on Economic, Social and Cultural Rights. The Committee aims to enforce compliance through constructive dialogues with signatory governments.

Culture, creators, and copyright
Article 15 of the ICESCR recognises the right of individuals to participate in cultural life, enjoy benefits of scientific progress, and benefit from the protection of moral and material rights over any scientific discovery or artistic work that they create.

These elements are interconnected. The right to participate in cultural life implies that there must be a culture. Copyright enables creators to own their work and is the mechanism through which they are paid for it – it incentivises creativity and promotes the creation and development of culture. It is key to both culture and the ability to participate in it.

Similarly, the rights to enjoy the benefits of scientific progress require protection of creators' scientific, literary, and artistic creations.

This is the full text of article 15:

1. The States Parties to the present Covenant recognize the 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.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Creators' rights and other human rights
Sometimes arguments are made that particular sets of rights trump others. For example, it is sometimes argued that creators' rights should be trumped by others' freedom of expression. This is a false dichotomy: there can be no flourishing culture without creators' cultural productions.

Elevating one set of rights over another contradicts the principle that human rights are indivisible and interconnected. The UN acknowledged this principle in the 1993 Vienna Declaration and Programme of Action.

Creators' rights and suppression of creators and their works
In some countries creators experience suppression of their works, imprisonment, and other forms of repression.

International law protecting creators' moral and material rights cannot directly overcome these abuses, but moral protections can help to prevent creators' names being forgotten. In addition, protection of material rights can help some creators to derive income from their works in other markets, even if they are suppressed at home.

Intellectual property and the right to participate in cultural life
The relationship between these can be compared to the right of creators to benefit from the protection of the moral and material rights in their works. This right is very similar to copyright law.

It follows that copyright protections are integral to human rights. Domestic copyright law can be viewed as the legal means of achieving the protection in human rights law to protect creators' moral and material rights.

Our government's obligation to provide copyright protections
As a signatory to ICESCR, New Zealand is obliged to report to the Committee on Economic, Social and Cultural Rights, which monitors its implementation. Reports cover legislative, judicial, policy, and other measures taken towards implementation and are due every five years. The Committees respond with its concerns and recommendations.

This is reinforced by another international instrument New Zealand is a signatory to: the Berne Convention for the Protection of Literary and Artistic Works of 1886. This requires member states to provide a minimum level of substantive copyright protections to creators.

Tāwhia Copyright Aotearoa does not provide legal advice, only general information on copyright issues. If you require expert or legal advice on copyright, you should seek the services of a legal professional. For more information please contact us.