

## **The Author and Holders of Related Rights: Difference in Legal Status and Equality in Legal Protection**

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### **Abstract:**

The study consists in examining the various practical issues affecting the author and holders of related rights, as the study addressed the legal protection of both the author and holders of related rights, by casting light on the difference in the legal status of each of them and the supremacy of the author's legal status, in addition to addressing the requirements of the issue of equality in legal protection between them.

**Keywords:** Author, Holders of Related Rights, Work.

### **Introduction**

Copyright is considered the solid and firm foundation for the protection of human thought in all its forms. Intellectual production and creativity have always played, and continue to play, a role in the development and progress of nations. The value of thought lies not only in its existence but also in benefiting from it on the widest possible scale. This production no longer stops at the borders of a specific state, but has expanded to include several countries, which has made nations partners in literary and artistic production. The protection of this production has thus become a duty not only upon a specific state, but upon all countries of the world. Hence, the urgent need emerged for the existence of an international framework for the protection of copyright.

The issue of author protection has received wide attention at both the international and domestic levels, and this attention increased after the emergence of new types of works and intellectual creations, as the intellectual production of these works has become characterized by universality due to the growing global use thereof. The development in the field of literary and artistic works required the enactment of new legislation or the amendment of certain provisions of existing legislation in force for the protection of copyright in a manner that achieves the interest of the latter.

**Importance of the Study:** The importance of the study stems from the importance of intellectual innovation. It was imperative for the Algerian legislator to find an effective legal guarantee that works to stimulate the process of scientific research, protect individual and collective creativity, and promote discoveries in all fields. This was achieved through the issuance of numerous legal texts that preserve and protect intellectual property and regulate

new publications and intellectual creations, in accordance with international legal foundations by signing international conventions or issuing a set of internal legal texts.

**Problematic of the Study:** In light of these data, we may ask: to what extent is the approach adopted by Algerian legislation under the law on the protection of copyright and related rights serious in ensuring the protection of the rights of the latter? And to what extent can the guarantees provided by Algerian legislation be considered valid?

**Methodology Used:** In answering the problematic raised by the study, we relied on description whenever necessary for analysis. The methodology is based on combining the descriptive and analytical approaches in order to reach the objective of this study. To achieve this aim, we relied, in addition to the descriptive and analytical approaches, on the comparative approach in order to examine the mechanisms addressed by comparative legislations.

**General Division of the Study:** This study was divided into two sections; the first section is related to presenting some aspects of the supremacy of the author's legal status, while the second section is related to studying the issue of equality in protection with holders of related rights.

### **Chapter One: Supremacy of the Author's Legal Status**

The author is considered the essential axis around which the process of intellectual production revolves. The more effective the consecration of legal protection, the more sound and efficient intellectual production becomes.

The study of the supremacy of the author's legal status can only be achieved through a preliminary introduction that includes defining the author (First Requirement), then moving to clarify the distinctive features of the author that establish the supremacy of his legal status (Second Requirement).

#### **Section One: Definition of the Author**

Defining the author requires addressing his definition according to the doctrinal perspective (First Branch), then moving to defining the author according to the legislative perspective (Second Branch).

##### *Subsection One: The Author According to the Doctrinal Perspective*

The author is defined as any person who produces an innovative intellectual production, whether this production is literary or artistic, and regardless of the method of its expression, whether in writing, drawing, photography, or any other means. Others have defined him as anyone who produces a mental production of whatever type, as long as his production contains a degree of innovation.

It is inferred that this person is the author through placing his name on the work. However, this does not mean that the appearance of a person's name on the work constitutes conclusive evidence that he is the author, as the work may be published under another person's name if the author wishes to remain concealed. In such a case, the work appears under a pseudonym or anonymously.

*Subsection Two: The Author According to the Legislative Perspective*

The Algerian legislator addressed the definition of the author in Chapter Two of the ordinance relating to copyright and related rights, as Article 12 thereof provides: “The author of a literary or artistic work within the meaning of this ordinance is the natural person who created it.

A legal person may be considered an author in the cases provided for in this ordinance.”

From the previous text, we conclude that the author may be a natural person or a legal person. He is considered a natural person if the intellectual activity attributed to him is the product of his own mind.

**Section Two: The Distinctive Features of the Author that Establish the Supremacy of His Legal Status**

The author is distinguished by a set of features that establish the supremacy of his legal status. The author of the work is the one whose name is mentioned on the work or attributed to it upon publication as its author, unless proof to the contrary is established. The author is also considered the one who publishes the work without a name, under a pseudonym, or by any other method, provided that no doubt arises regarding the true identity of the author. The author may also be a single individual or a group of individuals based on the direction of a natural or legal person.

Legislations have recognized for the author or the holder of the right in the protected work exclusive powers consisting of obtaining appropriate remuneration in return for what he has achieved through works based on innovative effort embodied in a tangible material form. In addition, sufficient guarantees have been provided to enable him to exercise these rights in an atmosphere where he feels secure about his work, which constitutes an incentive for him to continue creativity.

To achieve this objective, legislation has entrusted the author with a set of moral rights characterized by their attachment to his personality and their inalienability and non-transferability except within the limits permitted by law. Thus, rights over the author’s literary works are classified into exclusive rights capable of circulation and transfer, including the author’s economic rights, and other non-exclusive rights that are non-transferable by their nature and are perpetual, including the author’s moral rights.

The author enjoys the right to publish the work under his name or under a pseudonym. He may place a mark on his work and bears the burden of proving that this mark belongs to him in the event of a dispute.

Publishing the work under a pseudonym or anonymously is usually preceded by an agreement between the author and the publisher granting the latter the authority to publish. The work always remains connected to the author’s personality; the absence of the name does not constitute a waiver of his right to attribute the work to himself. In such a case, the publisher is considered an agent of the author in exercising his rights.

The author is considered the holder of the right to communicate the work to the public by recitation, delivery, performance, representation, broadcasting, television, cinematography, or any other means. However, he may waive this authority to the public in accordance with the agreement concluded between them and under the conditions prescribed by law.

He also has the right to have his name declared in the case of public performance, the right to publish his work under a pseudonym or leave it anonymous, and the right to prohibit others from publishing his works under another name or distorting his name.

The reproduction of the work requires the necessity of mentioning the author's name. If he writes a book, he has the right to have his name mentioned on the basis that he is the author of that book. He also has the right to have his name mentioned when this work is used within reasonable limits. For example, it is neither logical nor reasonable to require the operator and manager of music at parties to mention the name of the author and composer of every song; the right of paternity does not require all that. However, in the case of live musical concerts, the artist has the right to have his name mentioned on the concert program, for example.

## **Chapter Two: The Issue of Equality in Legal Protection between the Author and Holders of Related Rights**

Related rights to copyright refer to those rights related to the exploitation of the literary or artistic work. It is therefore necessary to address the difference between copyright and related rights (First Requirement), then move to study the issue of equality between the author and holders of related rights in protection (Second Requirement).

### **Section One: The Difference between the Concept of the Author and the Concept of Holders of Related Rights**

Studying the difference between copyright and related rights requires addressing first the beginnings of the emergence of the term holders of related rights (First Branch), in addition to examining some aspects of the difference between copyright and related rights (Second Branch).

#### *Subsection One: The Beginnings of the Emergence of the Term Holders of Related Rights to Copyright*

The emergence of the term holders of related rights dates back to 1984, as the term related rights was first used on the occasion of the revision of the Berne Convention for the Protection of Literary and Artistic Works with the aim of granting a degree of protection to those addressed by this category of intellectual property rights, in view of the significant role they play in disseminating literary and artistic works. Many intellectual works do not easily and effectively reach the public without the intervention of performers, as their activities represent the soul in works that represent the bodies.

Initially, attention was focused on the author. However, protecting the author alone is not sufficient, due to the existence of a creative and assisting category no less important than the author, whose task is to communicate works to the public by assisting authors in their dissemination, whether through acting, singing, performance, or by preserving them in material media to which reference can be made. This category bears the name related rights to copyright because it is adjacent to copyright.

#### *Subsection Two: Aspects of the Difference between the Author and Holders of Related Rights*

Related rights have successfully provided assistance to the author in production and intellectual creativity. Without this category, the author would not have been able to communicate his work to the public easily. Holders of these rights — namely performers, producers of phonograms

and audiovisual recordings, and broadcasting organizations — have received significant attention, and their protection has become an international demand, whereby national legislations are required to provide a minimum level of protection for this category imposed by the reality of scientific and technological progress in the dissemination of intellectual works.

We conclude that holders of related rights possess great importance in presenting and bringing intellectual works to the public in a professional and creatively distinct manner, which increases the literary, artistic, and even economic value of works. Thus, holders of related rights are considered complementary to the creative role carried out by the author, and their works are no less important than the works of the author himself. Therefore, they have come to be called holders of related rights to copyright, and their rights have become an integral part of intellectual property rights.

### **Section Two: The Reality of Legal Equality between the Author and Holders of Related Rights in Protection**

Despite the difference between copyright and related rights, as the works of holders of related rights are independent in their legal nature and in no way rise to the level of innovative works that confer upon their holder the status of author and establish between him and the work a distinctive relationship.

However, the Algerian legislator recognized legal equality between them by considering holders of related rights as authors having all the rights that the author has over the literary or artistic work, through the provisions of Articles 112, 120 and 121 of the ordinance relating to copyright and related rights, which refer us each time to what is applicable to the author. This leads us to say that the Algerian legislator was more neglectful of the special nature of those rights, which in all cases do not rise to the level of intellectual works.

In addition to his disregard of the effects that this ruling may entail and what may result from it in terms of prejudice to the author's right in any form whatsoever.

The recognition of legal equality between holders of related rights and authors reduced the natural and effective scope of this latter category, strengthening the position of persons assisting and contributing to intellectual or artistic creation at the expense of the author. The result became that the author began to chase after performers or producers of sound recordings and even broadcasting organizations, convinced that his literary works would not achieve the desired economic and moral value without the assistance of holders of those rights.

### **Conclusion:**

This study addressed one of the issues that is no less important than the various problems affecting literary and artistic property in practice, as it relates to the legal protection of the author and holders of related rights. Despite the superiority and elevation of the author's legal status, the Algerian legislator established unity of legal protection.

The legislator granted the author or the holder of the right over the protected work exclusive powers based on obtaining appropriate remuneration in return for what he achieved through works founded on innovative effort embodied in a tangible material form. In addition, he provided sufficient guarantees enabling him to exercise these rights in an environment in which he feels secure about his work, constituting an incentive for him to continue the path of

creativity. To achieve this objective, the legislation entrusted the author with a set of moral rights characterized by their attachment to his personality and their inalienability and non-transferability except within the limits permitted by law.

*The study concluded with a set of results that can be listed successively:*

*First:* The author is any person who produces an innovative intellectual production, whether literary or artistic, and whatever the method of its expression, whether by writing, drawing, photography, or other means. It is inferred that this person is the author by placing his name on the work; however, the appearance of a person's name on the work is not conclusive proof that he is the author, as the work may be published under another person's name, in which case it appears under a pseudonym or anonymous name.

*Second:* The author enjoys a set of rights divided into moral rights attached to his personality, inalienable, imprescriptible, and non-waivable, and other exclusive economic rights that are transferable.

*Third:* There exists a difference between copyright and related rights, as the works of holders of related rights are independent in their legal nature and in no case rise to the level of innovative works that confer upon their holder the status of author and establish between him and the work a distinctive relationship. However, the Algerian legislator recognized legal equality between them by considering holders of related rights as authors having all the rights that the author has over the literary or artistic work, through the provisions of Articles 112, 120 and 121 of the ordinances relating to copyright and related rights.

*Fourth:* The Algerian legislator disregarded the special nature of copyright, which differs from the rights granted to holders of related rights and which in all cases do not rise to the level of intellectual works, in addition to disregarding the effects that this ruling may entail and what may result from it in terms of prejudice to the author's right in any form whatsoever.

*In light of all these results, we recommend the following:*

*First:* Reconsidering the drafting of Articles 112, 120, 121 and 122 of the ordinance relating to copyright and related rights in a manner that places the author in a higher position than holders of related rights.

*Second:* Not expanding the scope of limitations and exceptions to copyright provided for in Chapter Three of the ordinance relating to copyright and related rights.

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