

The Conflict Between the Current International Copyright Regime and the Islamic Social Justice Theory

Authors : Abdelrahman Mohamed

Abstract : Copyright law is a branch of the Intellectual Property Law that gives authors exclusive rights to copy, display, perform, and distribute copyrightable works. In theory, copyright law aims to promote the welfare of society by granting exclusive rights to the creators in exchange for the works that these creators produce for society. Thus, there are two different types of rights that a just regime should balance between them which are owners' rights and users' rights. The paper argues that there is a conflict between the current international copyright regime and the Islamic Social Justice Theory. This regime is unjust from the Islamic Social Justice Theory's perspective regarding access to educational materials because this regime was unjustly established by the colonizers to protect their interests, starting from the Berne Convention for the Protection of Literary and Artistic Works 1886 and reaching to the Trade-Related Aspects of Intellectual Property Rights 1994. Consequently, the injustice of this regime was reflected in the regulations of these agreements and led to an imbalance between the owners' rights and the users' rights in favor of the former at the expense of the latter. As a result, copyright has become a barrier to access to knowledge and educational materials. The paper starts by illustrating the concept of justice in Islamic sources such as the Quran, Sunnah, and El-Maslha-Elmorsalah. Then, social justice is discussed by focusing on the importance of access to knowledge and the right to education. The theory assumes that the right to education and access to educational materials are necessities; thus, to achieve justice in this regime, the users' rights should be granted regardless of their region, color, and financial situation. Then, the paper discusses the history of authorship protection under the Islamic Sharia and to what extent this right was recognized even before the existence of copyright law. According to this theory, the authors' rights should be protected, however, this protection should not be at the expense of the human's rights to education and the right to access to educational materials. Moreover, the Islamic Social Justice Theory prohibits the concentration of wealth among a few numbers of people, 'the minority'. Thus, if knowledge is considered an asset or a good, the concentration of knowledge is prohibited from the Islamic perspective, which is the current situation of the copyright regime where a few countries control knowledge production and distribution. Finally, recommendations will be discussed to mitigate the injustice of the current international copyright regime and to fill the gap between the current international copyright regime and the Islamic Social Justice Theory.

Keywords : colonization, copyright, intellectual property, Islamic sharia, social justice

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