

## **OMRI ALTER**

Omri Alter is a doctoral student at the Hebrew University of Jerusalem, Faculty of Law. His dissertation, written under the supervision of Prof. Guy Pessach, examines distributive rules in copyright law which aspire to provide authors with a larger share of the profits derived from the exploitation of their work. The dissertation relies on insights from different disciplines, such as cultural economics, sociology of culture and the political economy of the media, to critically examine the increasing trend in the legislation of these rules.

## Fairness towards authors: Are lump-sum payments really an obstacle?

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**Abstract:** A consistent narrative of recent years in copyright law is that authors deserve fairness regarding their relationship with commercial entities. This narrative is reflected most conspicuously in a growing trend around the world of adopting unwaivable or inalienable rules that aspire to provide authors with a larger share of the proceeds deriving from the commercial exploitation of their work. These rules appear both on common law countries, such as the termination of transfer provisions of US copyright act, and on continental law countries, such as the equitable remuneration schemes.

Most of these rules have a common denominator – they deny the possibility of authors renouncing all of their interests in a work they have created, by paying them a lump-sum payment. These rules force payment methods that keep authors part of the commercial success (or failure) of a work, such as royalties that derive from sales or the right to have the contract renegotiated several years after it was concluded. To many, these methods of payment reflect fairness toward authors.

Fairness considerations become hard to resist when this issue is framed as a conflict between starving artists and large capitalist conglomerates. Because fairness has a large intuitive appeal, it seems almost impossible to critique this trend. After all, who of us is not in favor of fairness? The self-evident answer to this question reflects the direction the literature has mostly taken and the gap regarding the issue of fairness towards authors.

This article seeks to contribute to the discussion by critically considering the question of fairness towards authors. After rejecting the use of economic efficiency as a prism to the issue of lump-sum payments and unwaivable/inalienable rules, it offers fairness considerations as the suitable framework for discussion. It then uses criteria from different disciplines, such as social psychology, game theory, distributive justice and general contract law scholarship to discuss whether the typical interaction between authors and commercial entities is fair.