



Intellectual Property and Human Rights: An Instrumental View

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ABSTRACT

Human rights and intellectual property, the two frames of law that were once strangers, are now becoming increasingly close. For decades the two subjects developed in virtual isolation from each other. The two subjects practically developed independently of one another for many years, however, in recent years, uncharted intersections between intellectual property law on the one hand and human rights law on the other. The International standard-setting initiatives have started to identify the relationship between the two subjects but in the last few years, international standard setting activities have begun to map previously uncharted intersections between intellectual property law on the one hand and human rights law on the other.¹ The paper explores whether there is a connection between intellectual property rights and human rights, and if there is, whether there is conflict or peaceful cohabitation between the two. The paper discusses how, historically, even though intellectual property rights are mentioned in a number of legal documents, including Article 15 of the International Covenant on Economic, Social, and Cultural Rights and Article 27 of the Universal Declaration of Human Rights, they were both thought to be separate, isolated branches of law. It also discusses how this relationship was created through a variety of tools and understanding their shared connection. It also explores the understanding the external and internal conflicts between two regimes and a peace making, conciliatory, and balanced approach between human rights and the intellectual property rights. When approaching the matter from a scientific or technological perspective, it is essential to go beyond current intellectual property rights because of how important those fields are in the twenty-first century.

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I. INTRODUCTION

'Intellectual Property' is a generic term and as the name implies, intellectual property rights (IPRs) are rewards provided to creators or inventors for coming up with novel ideas or innovations and, more significantly, for using those inventions to advance society. The rights that are accorded to a person as a result of that person's status as a human being rather than by accident or choice. They are the rights that guarantee a person's right to basic survival. Now, if we look at the nature of intellectual property rights in relation to human rights, we see that the following is true of IPRs: They are subject to governmental interference in order to uphold human rights duties.

Major changes at the national and international levels over the past 20 years called for a creative and practical strategy for a more comprehensive knowledge of intellectual property protection. The World Trade Organization (WTO) was established in 1994, and as part of that accord, the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement entered into force². The TRIPS agreement established universal guidelines for granting and enforcing intellectual property rights (IPRs). Because many developing nations, especially the least developed ones, are unable to apply the TRIPS criteria, the globalisation of IPRs also sparked a discussion over the link between human rights and

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¹<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1399&context=mjlst>

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²https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

intellectual property. For example, the HIV/AIDS epidemic in Brazil and South Africa, The cases of bio piracy and misappropriation of the traditional knowledge, Gene patenting and research on the stem cells for patenting and the right to “fair use” of the copyrighted material. The link between intellectual property rights and human rights has been the subject of a critical discussion sparked by the aforementioned points.³

Human rights are thought to be in opposition to intellectual property rights, which are exclusively interested in financial gain and lack a social context. It's because the nature of intellectual property rights in comparison to human rights may not have been fully understood up to this point. Despite the fact that intellectual property rights have been placed within a variety of policy contexts, including commerce, investment, culture and heritage, the environment, food security, and scientific and technical advancement. However, despite these expanding connections, the nature of intellectual property rights as human rights and the connection between those rights and other human rights have not been extensively investigated.⁴ In order to achieve a better understanding and a balance between intellectual property rights and human rights, the research paper will discuss some of the concerns that must be addressed.⁵ In addition to this, we'll also be addressing how to make sure TRIPS has an influence on national legal systems in order to achieve the association between intellectual property rights and the human rights. Similar to how human rights are essential to a person's right to a dignified existence, intellectual property rights are essential to the growth of a nation's economy as well as to encourage creators and inventors by rewarding them for the creations that they make possible through their labour, valuable time, and, of course, intelligence.

Three eras can be distinguished in the protection of intellectual property at the global level. The absence of international protection essentially defines the first stage, the territorial period. The alternative, or international period, begins in Europe toward the end of the 19th century with the ratification of the Paris Convention for the Protection of Industrial Property, 1883 (the Paris Convention), and the Berne Convention for the Protection of Literary and Cultural Works, 1886, by a group of comparable nations (the Berne Convention)⁶. The relationship that the United States of America (the U.S.A.) established between trade and intellectual property in the 1980s, a relationship that arose at a multinational position in the 1990s, is where the third period, known as the global period, got its start.

This article examines the connection between human rights and intellectual property rights. Governments, judges, and academics have recently recognised the relationship between the two after going for a long time without noticing it. International efforts have started to trace the previously unexplored relationships between intellectual property rights and human rights over the past ten years. The two's relationship has also been highlighted in a number of international forums, including the Human Rights Council, Committee on Economic, Social and Cultural Rights, World Intellectual Property Organization, and World Trade Organization.

International documents including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, among others, have investigated the connection between human rights and intellectual property rights. Additionally, there are two methods for connecting the two fields; one discusses their mutual coexistence and the other their conflict. In an effort to provide an explanation, this article examines various human rights and intellectual property rights.⁷

II. JURISPRUDENTIAL SEPARATION OF HUMAN RIGHTS AND IPR

There are various types of connections between human rights and intellectual property rights. For instance, patent laws acknowledge that the rights granted have a socio-economic component and that a balance between the interests of the patent holder and the larger interests of society must be reached. The achievement of human rights is impacted both directly and indirectly by intellectual property rights. For instance, intellectual property rights have both ethical and financial components. The latter has a connection to some facets of human rights. Finally, certain rights relating to science and technology are recognised by human rights accords.

³https://www.researchgate.net/publication/283482712_Traditional_Knowledge_and_Genetic_Resources

⁴https://www.wipo.int/edocs/pubdocs/en/wipo_pub_762.pdf

⁵https://www.wipo.int/edocs/mdocs/tp/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_5.pdf

⁶<https://www.wipo.int/treaties/en/ip/paris/>

⁷<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

The Universal Declaration of Human Rights' clauses on science and technology demonstrate the long-standing relationship between intellectual property rights and human rights (Universal Declaration).⁸ However, real property rights—rather than intellectual property rights—have long been the subject of the primary discussions regarding the connections between human rights and property rights. The argument over intellectual property rights and human rights has fundamentally transformed as a result of the passage of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)⁹ and its consequences for poor nations.

However, the relative isolation has ended as a result of the awareness that there is a direct correlation between the protection of intellectual property rights and the achievement of the human rights of the underprivileged in developing nations.¹⁰ The reality on the ground, however, is somewhere else. The truth is that despite the fact that both the Human Rights Convention and the Convention on Intellectual Property Rights discuss the welfare of the people living in the concerned states and the welfare of the states themselves, the concept of intellectual property rights does not serve the fundamental goal of the Human Rights Convention. The protection of intellectual property rights promotes the growth and defence of the moral and financial rights of the creator or innovator. Because both bodies were preoccupied with more significant matters, there was a separation between the two spheres. The development, codification, and improvement of human rights procedures were the top concerns for human rights law in the years after World War II. Economic, social, and cultural rights were least established during this period and only recently have they been given consideration. For those who support IPR, the main goals are the steady development of rights through rewrites of the Berne, Paris, and other treaties on a regular basis, and later, the establishment of a connection between IPR and trade.

In general, it is believed that technical breakthroughs have a positive impact on society and should be supported. But somewhere, it violates a person's fundamental rights. As with the human right to health, the connection between medical patents and the implementation of the right to health in the context of the HIV/AIDS and tuberculosis epidemics in developing nations has become obvious.¹¹ This is because the medications that are now available to treat these disorders are relatively new, more expensive, and unaffordable due to product patent protection. Due to the harmonious coexistence of both, the fundamental question in this argument is how to maintain a balance between intellectual property rights and human rights.

III. UNDERSTANDING THE EXTERNAL AND INTERNAL CONFLICTS BETWEEN TWO REGIMES

The Human Rights - Intellectual Property Rights regime has two main philosophies. The first strategy resolves the conflicting nature of the relationship between the two worlds. This strategy is stated in a resolution from the United Nations Human Rights system from 2000 that claims there are "actual or potential conflicts" between the realisation of economic, social, and cultural rights and the execution of the TRIPS Agreement. Strong intellectual property protection, according to this framework, undermines and is therefore incompatible with a wide range of human rights requirements, particularly in the field of economic, social, and cultural rights.

The "conflict" position contends that intellectual property rights are not essential human rights but rather are simply useful legal tools for advancing social and commercial goals. However, the so-called conflict view may actually be better referred to as the "primacy of human rights" view because it has been consistently expressed in a number of official reports and comments from various UN organisations over the past ten years without actually stating that IP rights and human rights cannot coexist, but rather that whatever compromise is made between private and public interests in IP, "the primary objective and overriding consideration should be the protection of human rights."¹²

Finding the types of conflict that can endure, as well as those in which human rights don't negatively impact conflict, is one of the most significant challenges. As a result, two categories of conflicts—external conflicts and internal conflicts—have been established. While internal disputes are most prevalent within the human rights regime itself,

⁸https://www.wipo.int/edocs/pubdocs/en/wipo_pub_762.pdf

⁹https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

¹⁰https://www.wipo.int/pressroom/en/briefs/tk_ip.html

¹¹<https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12161>

¹²<http://www.penaclaims.com/wp-content/uploads/2018/09/Vedansh-Batwara.pdf>

external conflicts are seen when the highbrow property and human rights regimes converge. Regarding external disputes, it is crucial to distinguish between intellectual property safety features that are based on human rights and those that are not. The consensus is that over time, international legal groups and colourful scholars have learned to celebrate the colourful connections. The creator or owner of the intellectual property rights embeds both the generating rights and mortal rights inside him, whereas the other party only has the latter, and this is the only reason where intellectual property is considered as in opposition with the principles of intellectual property rights. At the same time, the realisation of mortal rights is also impacted by intellectual property rights in direct and indirect ways. Intellectual property rights, for instance, cover both financially and morally sound fundamentals.¹³ There are some characteristics of mortal rights that have a connection to the ultimate. Additionally, agreements governing intellectual property rights honour certain rights related to knowledge and technology and notably for those theorists who accept moral realism as a framework for human rights defence. For moral realists, the recognition test is not necessary for the existence of universal rights. If there are any universal moral rights, they do not fall under the purview of positive law. Even non-moral realists find it difficult to decide whether or not something qualifies as a human right using a straightforward recognitional criteria. Examples of widely accepted conventions include the etiquette rules governing interactions between travellers at international airports all around the world. Does this mean that, for example, the right to queue has the same universal standing as the rights to life and liberty? The concept appears to be "more" than it first appears to be.

To claim that intellectual property rights are a type of natural right would be one way to provide this "something extra" for intellectual property rules. The idea that intellectual property rights are inherent rights is one way to defend their existence. There are several issues in presenting intellectual property as a human right using the conceptual framework of natural right theory. The first is that, even if one may defend the right to private property as a natural right, the question of whether intellectual property rights are natural property rights remains.¹⁴ It is plausible to respond that since legislators from all over the world define intellectual property rights to be personal property rights, they must be property rights.

An alternative conceptual approach that would lead to the same conclusion that intellectual property rights are essential human rights is to argue that such rights should be included in the category of human rights because they safeguard the creators' personalities. The civil law systems of writers' rights are already supported by a personality-based justification strategy. One question is whether all intellectual property rights might be logically supported by a personality-based approach.⁶⁵ It may turn out that just a small number of intellectual property rights fall under the umbrella of human rights. The protection of all intellectual property rights does not follow even if we assume that there is a personality right that falls within the umbrella of human rights.

The recognitional test of human rights may simply be defended, and it could be argued that since intellectual property rights are so pervasive in international law, they constitute human rights. This brings up the issue that was previously mentioned. Is it true that a rule becomes a human rights rule when it is accepted by everyone? It's vital to keep in mind that this line of reasoning would have to address the issues that Schermers believes result from the idea that the right to property is an essential human right (problems like those previously stated).

IV. A PEACEMAKING, CONCILIATORY, AND BALANCED APPROACH BETWEEN HUMAN RIGHTS AND THE INTELLECTUAL PROPERTY RIGHTS

Two legal documents—the 1948 "Universal Declaration of Human Rights" (UDHR) and the "International Covenant on Economic, Social, and Cultural Rights"—will be cited here in order to provide a broad overview of the issue and provide context for it. Article 27.1 of the UDHR, which states that "everyone has the right to freely participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits,"¹⁵ and Article 27.2 of the UDHR, which states that "everyone has the right to the protection of the moral and material interests resulting from any

¹³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>

¹⁴https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_5.pdf

¹⁵<https://www.humanrights.com/course/lesson/articles-26-30/read-article-27.html>

scientific, literary, or artistic production of which he is the author,"¹⁶ are sufficient for the purposes at hand. Even though IPRs have occasionally developed in relative isolation, receiving attention primarily from a small community of professionals, this essay has created the groundwork for a protracted discussion on the subject of IPRs and human rights.

The debate's focus has been established by two major schools of thinking i.e. the proponents of the theory that IPRs and human rights are incompatible have made attempts to deny IPRs the status of human rights, creating a hierarchy among the UDHR's rights that would give some human rights higher priority and, in turn, justify restricting IPRs in order to advance interests that, in their view, belong to the public interest rather than the private interest.

On the other hand, proponents of the coexistence hypothesis do not believe that there is an inherent contradiction between the two bodies of law because they interact in a way that is mutually beneficial, for instance because IPRs have contributed to the electronic copy.¹⁷

While the contentious—but perhaps not always fruitful—debate continues to explore the connection between intellectual property rights and human rights. The historical intent of lawmakers in a number of systems of jurisprudence has generally been to accord IPRs a position equivalent to other forms of property rights, as evidenced by the fact that IPRs refer to "property" in a variety of languages.

Thus, it is abundantly evident from the debate above that in order for human society to function, both human and intellectual property rights must be respected. Both of them should live on, but human rights should be given precedence over intellectual property rights. Because of this, all agreements that support both intellectual property rights and human rights should place appropriate restrictions on those rights in order to guarantee, defend, and advance those latter two. One consideration is that Humans are social creatures. Individuals are granted rights because they are human, not because of chance or choice.

V. CONCLUSION

The very existence of intellectual property rights was initially justified on the grounds that incentives and rewards to artists and inventors result in benefits to society. Traditionally, intellectual property regimes sought to strike a balance between the rights of creators and the interests of the public to have access to artistic works. Current events, however, have a tendency to erode these checks and tilt the system in favour of a much smaller set of interests. Human rights and intellectual property rights, particularly the patent right regime, have overcome their initial apprehension about one another and are today becoming more and more entwined. For many years, these two fields have almost developed independently of one another. However, there have been numerous worldwide standard-setting initiatives over the past few years that have started to investigate the shared goals of patent law on the one hand and human rights law on the other.

Due to an inherent network of bilateral, regional, and international treaties that have already been covered in this study, IPRs have already spread throughout the world. The extensive usage of these rights has had a variety of effects on human rights. Patents, a crucial aspect of intellectual property, didn't become widely recognised until the 20th century. The IPRs include the full spectrum of divergent rights. Many of them are protected for varied amounts of time by statute. Human rights, on the other hand, refer to the fundamental liberties and rights to which all people are entitled, including the right to equality before the law, the freedom of speech and opinion, and the right to life and liberty—standards without which individuals cannot live in dignity.

¹⁶<https://www.humanrights.com/course/lesson/articles-26-30/read-article-27.html>

¹⁷<https://www.oecd.org/competition/abuse/1920398.pdf>