



## Intellectual Property and Human Rights

### KEYWORDS

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**ABSTRACT** *Current trends in Intellectual property worldwide are truly alarming. These trends can and must be reversed. Human Rights defenders have an important role to play in this important task. Intellectual property rights are recognized as human rights in the Universal Declaration of Human Rights, 1948, and in other international and regional human rights treaties and instruments. However, the relationship between intellectual property systems and human rights is complex and calls for a full understanding of the nature and purposes of intellectual property system. Intellectual property regimes seek to balance the moral and economic rights of creators and inventors with the wider interests and needs of the society. Historically, governments in developed countries have sought to promote creativity, the dissemination of ideas, development of inventions, and scientific progress by providing limited protection to creators and inventors. A major justification for patents and copyrights is that incentives and rewards to inventors result in benefits for the society.*

### General:

Property in the legal sense is essentially a bundle of rights flowing from the concept of ownership and possession while property in common parlance refers to the material object, in a strictly legal sense it refers to the interests over things tangible or intangible which is recognized protected and enforced by Law. Intellectual Property is a nonphysical property which stems from or is identified as and whose value is based upon some idea or ideas. Intellectual Property encompasses the protection offered by the legal regimes in the form of Patents, Copyright, Trademarks, Designs, Geographical Indications, Layout design for integrated circuits and Trade Secrets. Property may be corporeal or incorporeal, corporeal property exists in material and is tangible in nature it generally possesses physical existence it can be seen and felt e.g., land, goods etc.

Incorporeal property on the other hand may exist in immaterial thing and its intangible in nature. It is an abstract in nature and may not be visible e.g., lease, servitudes easements, patents, copyright, trademarks etc. Intellectual property is an umbrella term for various legal entitlements which attach to certain types of information, ideas or other intangibles in their expressed form.

The holder of the legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the intellectual property. The term Intellectual Property reflects the idea that its subject matter is the product of the mind or the intellect these could be in the form of copy right, patents, trademarks, geographical indications, industrial designs layout-designs of integrated circuits plant variety protector.

IPR allows people to assert ownership rights on the outcomes of their creativity and inventive activity in the same way that they can own physical property. Intellectual property is a business asset that offers a firm competitive advantage over other. It very broadly includes the legal rights that result from intellectual activity in industrial, scientific literary and artistic field.

Intellectual Property has some features in common with

personal property. It is described as property because it can be purchased mortgaged, leases, sold or licensed in a somewhat similar means to personal property. Intellectual Property is intangible nature because of the difficulty of identifying and defining its physical characteristics

As a result of the Industrial revolution and the rapid developments made in the fields of science and technology as well as in art and culture, new products and processes are being added at a place that is a record in itself. This phenomenon combined with the growing volume and variety of international trade in goods and services has led to the growing demand for knowledge of IPR regimes across countries.

Intellectual property shares many of the characteristics associated with personal property such as land, buildings, stocks, bank balances, vehicles, etc. Like all of them, intellectual property too is an asset, and as such it can be bought, sold, exchanged, or gratuitously given away or its use licensed and regulated as in the case of other forms of property. If only intellectual property is tangible and its right of ownership, absolute and exclusive, then there is no need for any special IPR legal provisions. It is only because of the intangible nature of intellectual property, it requires special regulations by sovereign Governments to protect the legitimate interests of the owner of Intellectual Property.

The term "Human Rights" is a relatively modern invention. It covers under its umbrella by three different types of rights:

- The fundamental freedoms or classical civil liberties,
- Ethnic and religious rights and
- Socio-economic rights.

Some constitutions have enumerated the first or the first and the second and attempted to set up judicial enforcement of such rights. The third category has not been stated in a constitution in an enforceable form, but some constitutions refer to them as directive principles of state policy. Universal nature of human rights is beyond question

and International human rights instruments leave some margin of appreciation for states when applying them. Majority of nations are members of these instruments- create obligations for states to fulfill them.

#### Human rights may be divided into two categories

1. Fundamental human rights (e.g. prohibition of torture, slavery)

Beyond state interference, and open to international enforcement/interference

2. Non-fundamental human rights (e.g. right to property) open to state interference IPRs are non-fundamental human rights so open to state interference to fulfill human rights obligations.

A human rights approach to intellectual property takes what is often an implicit balance between the rights of inventors and creators and the interests of the wider society within intellectual property paradigms and makes it far more explicit and exacting. Intellectual Property and Human Rights was organized for identify and explore how a human rights framework can provide tools to support more equitable and development-oriented intellectual property regimes. **The International Covenant on Economic, Social and Cultural Rights (ICESCR)** is the major international human rights instrument addressing these issues. Article 15 specifies that States Parties, that is the countries that have ratified or acceded to this instrument, **"recognize the right of everyone"** both "to enjoy the benefits of scientific progress and its applications" and "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." To achieve these goals, the Covenant mandates that States Parties undertake a series of steps. These include "those necessary for the conservation, the development and the diffusion of science and culture." More specifically, States Parties "undertake to respect the freedom indispensable for scientific research and creative activity." Further, States Parties make the commitment to "recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields."

A human rights approach, particularly to be consistent with the norms in ICESCR, differs in a number of regards from the standards set by intellectual property law. In brief, it requires that the type and level of protection afforded under any intellectual property regime directly facilitate and promote scientific progress and its applications and do so in a manner that will broadly benefit members of society on an individual, as well as collective level. It establishes a higher standard for evaluating patent applications, namely that the proposed invention also be consistent with the inherent dignity of the human person and with central human rights norms. In making these determinations, a human rights approach emphasizes the equality of all persons. Because a human right is a universal entitlement, its implementation is measured particularly by the degree to which it benefits those who hitherto have been the most disadvantaged and vulnerable. These considerations go well beyond a simple economic calculus. A right to the benefits of science and technology implies a right of access on individual and collective levels. Additionally, a right to the benefits of science and technology cannot be achieved in the absence of careful government policies to determine priorities for investment in and the development of science. The human rights principle that "all peoples

have the right to self-determination" mandates a right of choice for members of society to be able to discuss, assess, and have a role in determining major scientific and technological developments. And finally, a human rights approach entails a right of protection from possible harmful effects of scientific and technological development, again on both individual and collective levels.

Although more than 130 countries have become States Parties to ICESCR and therefore are legally obligated to comply with these standards, few attempt to implement its requirements on a systematic basis. Too often, policy makers and legislators do not factor human rights considerations into decision-making on intellectual property regimes, instead relying solely on narrow economic considerations. In part, this situation reflects intellectual fragmentation of spheres of knowledge and interest. An additional complication is that Article 15 of ICESCR can be characterized as the most neglected set of provisions within an international human rights instrument whose norms are not well developed. All types of intellectual property are protected on a national basis. Thus the scope of protection and requirements for obtaining protection will vary from country to country. There are, however, similarities between national legal arrangements. Moreover, the current worldwide trend is towards harmonizing the national laws.

21<sup>st</sup> century has been known for the rapid pace of globalization, which is manifest in the growing cross national flows of goods, services, investments and ideas. These combined with the growing ease of imitation, produced a strong and continuing demand for improving the international legal frame work for the protection and enforcement of IPR. IPR have thus moved rapidly from being an esoteric subject confined to specialist circles to become a major policy issue in international economic relations and a term recognized by the general public the world over.

#### CONCLUSION

Intellectual property rights instruments have never directly addressed impacts on the realization of human rights. Yet, the adoption of the TRIPS Agreement and its progressive implementation in developing countries has been associated with certain specific difficulties. Problems identified in the context of medical patents and the human right to health indicate that measures must be taken to ensure that the progressive strengthening of intellectual property rights does not contribute to limiting access to drugs, something which would directly go against the commitments taken by states under the ICESCR with regard to the progressive realization of the human right to health.

Human rights instruments have done much more than intellectual property rights instruments to provide a link between science, technology, and human rights since instruments like the ICESCR include specific provisions in this area. Article 15(1) of the ICESCR provides a coherent perspective on the question of the rights and duties of all individuals with regard to the development and the enjoyment of scientific and technological development.

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