



ISSN(Online) : 2319-8753
ISSN (Print) : 2347-6710

International Journal of Innovative Research in Science, Engineering and Technology

(An ISO 3297: 2007 Certified Organization)

Website: www.ijirset.com

Vol. 6, Issue 5, May 2017

Striking a Balance between Human Rights and Intellectual Property

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ABSTRACT: There is an interesting relationship between human rights and intellectual property because it transcends the different levels and aspects of each legal field. It seems, however, that the relationship between the two only became evident only in the 1990s. This is mainly due to the fact that intellectual property rights have imposed constraints on the accessibility and realization of human rights by broadening their scope of protection. This was primarily due to the effect of intellectual property laws on healthcare access. The motive was solely commercial when intellectual property laws were originally drafted. The Law of Human Rights and the Law of Intellectual Property currently converge to a far greater degree than originally envisaged. Intellectual property has actually made its way into human rights. The right to intellectual property is also rooted in the Universal Declaration of Human Rights (UDHR) and the Declaration of the Rights of Indigenous Peoples of the United Nations (UNDRIP). The neglect of indigenous people's rights due to the growing number of misappropriations and misuse of cultural knowledge and expressions was another finding that was made in the early 1990s, primarily by human rights activists. Various foreign instruments have come into existence on the subject of indigenous cultural heritage, such as sacred artifacts and knowledge, or traditional cultural expressions, such as dance and music, and their association with the intangibility of culture. This attracts scholars to have healthy discussion on the inter-relationship between Human Rights and Intellectual Property. This review paper will highlight the interrelationship between Human Rights and Intellectual Property.

KEYWORDS: Human Rights; Intellectual Property; legal field; UDHR; and UNDRIP.

I. INTRODUCTION

Intellectual property regimes allow for the ethical and economic rights of authors and inventors to be matched with society's wider needs and desires. A significant argument for patents and copyrights is that inventors' incentives and rewards result in social benefits. The holding rights strategy of an individual takes what is generally an implicit balance between the rights of inventors and producers and thus the interests of the larger community in holding paradigms and makes it more concrete and exacting[1].

The International Covenant on Economic, Social and Cultural Rights (ICESCR) addresses these problems as a major international human rights instrument. "Article 15 provides that States Parties, i.e. countries which have a legal status or have acceded to the current instrument, "recognize the property of all" each "to enjoy the advantages of scientific advancement and its applications" and "to enjoy the protection of the ethical and material interests resulting from any scientific, literary or artistic creation of which the author is the author[2].

Since the last century, the right of all to share the benefits of research has been enshrined in human rights instruments, initially in Article 27 of the Universal Declaration of Human Rights (UDHR) and subsequently in Article 15 of the International Covenant on Physical, Social and Cultural Rights (ICESCR). The proper was commonly regarded as a "obscure" associate degree whose interpretation was widely ignored until the growth of the foreign belongings (IP) system under the Trade-Related Aspects of Agreement Belongings prompted an increase in legal scholarship and studies from international organizations seeking to resolve the "human rights contradiction[3]."

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The contradiction is believed to emerge from the juxtaposition of individual rights in human rights instruments over intellectual creations against everyone's rights to "share in scientific advancement and its advantages." This text draws on archived documents to show that the contradiction is based on an abstract obfuscation of human rights and computer rights and is at odds with the history of the UDHR drafters as well as the philosophical and legal foundations of human rights and computer rights[4].

A right to the advantages of science and technology means that simple connectivity would be accessible to every person and society. In addition, in the absence of cautious government policies to establish investment goals and thus the advancement of research, the right to the advantages of science and technology cannot be achieved. The concept of human rights that every person has the right and ability to demand half of the conduct of public relations demands that members of society be prepared to discuss, evaluate and play a decisive role in major scientific and technological advances through the right of selection. And, finally, a human rights approach means a right to security, once again at each individual and collective level, from possible adverse effects of scientific and technological progress[5].

In the science world, scientific journals are gradually being privatized and reduced. In order to protect their intellectual property, some researchers delay their publications and hide their knowledge. Thus, intellectual property is a real brake on scientific advancement instead of being an opportunity. For a large number of entities, the multiplication of patents and other intellectual property would create a situation in which everybody blocks the other. Therefore, intellectual property would limit creativity and product offerings as a horrible result.

Moreover, intellectual property is also a threat to a different human right: the right to health. As an example, patent holders set their price at a far higher level than generics most of the time, with the effect that a large number of people do not have access to any useful and sufficient medication, despite the fact that most of the developing states serve those people[6].

Traditional approach to the subject of relationship between human rights and IPR

The theory of conflict and co-existence has more or less been the standard approach to the issue of this relationship between human rights law and intellectual property law. The first argues that both realms are inherently in conflict with each other, and the other argues that there is no such conflict as the structures that control both areas of law are absolutely capable of peaceful harmony.

The view that the fields were totally unknown for quite some time goes out of the window because the moment in the history of their meeting lies in the nominal interest in intellectual property in the mid-1960s and 1990s by the intellectual property regime in human rights law[7].

Intellectual Property Rights and Realization of Human Rights

- The correlation between intellectual property rights and human rights in the relationship between medical patents and the right to health, especially in relation to the HIV/AIDS epidemics, has become evident with regard to the human right to health. This is due to the fact that patents cover a variety of medications used to alleviate HIV/AIDS. There is a direct correlation, therefore, between patents, drug costs, and access to drugs.
- Regarding the right to food, ties exist between patents in the field of genetic engineering, limitations on the rights of farmers and access to food. While the link between Intellectual Property Rights and Human Rights has been established, it has been discussed in human rights forums almost exclusively. In other words, a visible imbalance exists to the degree that the language of human rights has not entered the institutions of intellectual property rights, while the language of intellectual property rights is now frequently debated in the institutions of human rights[8].

External and internal conflicts

One of the key tasks is to define the types of conflicts that could occur and, in addition, to identify those where human rights do not play a role and are not useful for conflict resolution, so two sets of conflicts have been identified: external conflicts and internal conflicts. It is an observation that, while internal conflicts exist only within the human rights

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regime itself, external conflicts lie at the intersection of human rights and intellectual property regimes. It is essential to distinguish the human rights dimensions of intellectual property security from those that do not have a human rights basis with regard to external conflicts[9].

The concept of human rights primacy can be used to settle disputes until the conflict's human rights characteristics become separable from conflicts. The theory, which is very useful, has its own Achilles heel and does not resolve all disputes, especially those in areas where the human right in question is only loosely defined and the outlines are not well defined.

The consensus was that international legal communities and different academics have come to understand the numerous connections between intellectual property rights and human rights over a period of time. Patent laws, for instance, acknowledge that the rights given have a socio-economic dimension and that a balance needs to be preserved between the interests of the patent holder and the larger interests of society.

The only catch is that when intellectual property is seen as in conflict with the values of human rights, the founder or the holder of intellectual property rights embeds both the rights and human rights of the creator within him, while the other party only later. Around the same time, intellectual property rights also influence the realization of human rights directly and indirectly. Intellectual property rights, for instance, contain economic and moral components. Certain facets of human rights may be related to the latter. Human rights treaties also recognize such science and technology-related rights[10].

In documents such as the UDHR, it is the acceptance of such rights that allows the author to assert moral and material interest in any scientific output that provides the space for striking a balance between the rights of the founder and those of society that are inclined towards their broader interests.

II. CONCLUSION

It is very clear that the debate about dispute or coexistence is not something that can be resolved in such a short period of time right after the subject has clear sides. A 'Stranger' tag is the item that can be omitted from the list. It can be said with absolute sincerity that it is not possible to ignore the relationships these fields of law have encountered in the past.

Intellectual property rights must either be integrated into the framework of human rights or intellectual property rights must be defined in such a way that the core constitution of the applicable legal instruments, i.e.; ICESCR, TRIPS, does not cause conflict with each other and if disputes arise, there must be ways to resolve them, which again, Regardless of country, area and status, the solutions have to be universal.

A reconsideration is needed of the difference between the issues, the proposals, the tradition of the developed and developing countries. The wings of human rights have to understand that the recognition of intellectual property rights is essential, if not above, prior to human rights.

In their current form, international IP law and the TRIPS agreement do not provide adequate policy space to accommodate different requirements that are appropriate to pursue most, if not all, human rights priorities and concerns for an optimal balance between international IP law and human rights. Striking a balance between rights would be the most challenging challenge, as geographical considerations and economic, social and cultural dynamics are needed to strike a perfect balance between the two rights.

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