

Interrelationship between Human rights and Intellectual Property Rights

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ABSTRACT

Human rights and intellectual property, two forms of law that were once enemies, are gradually becoming familiar bedfellows. The two subjects have been working together in virtual isolation for decades. However, in recent years, international norm-setting efforts have begun to map previously unexplored ties between, on the one hand, intellectual property law and human rights. Two regimes have grown rapidly: human rights and intellectual property rights. On one hand, the rise of major multinational companies has led to a greater and tighter framework for the protection of intellectual property. Human rights, have acquired primacy in both cultural and legislative debates on the other hand. Developing countries have suggested that intellectual property rights as well as human rights frequently clash, particularly in the enforcement of their international TRIPS obligations. Nevertheless, developed nations are being pushed to provide greater security to intellectual property. The voices of the developed countries need to be heeded. This research paper seeks to understand and bring clarity to this long going debate between the two regimes.

Keywords

Developing countries, Human Rights, Intellectual Property, Intellectual Property Rights and Trade

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Introduction

The Intellectual Property (TRIPS) Trade-related Aspects Deal, introduced in 1994, is amongst the most controversial diplomatic deals that countries have negotiated to date. TRIPS has given substantial position to intellectual property rights since its adoption. In several countries the reinforcement of the system of intellectual property rights has been a focus of considerable attention and discussion. Developing countries are faced with tremendous difficulties because they have to make substantial changes to their laws in order to conform with TRIPS. Defense of intellectual property has important consequences for developing countries, especially in terms of the protection of human rights. As an example, drugs cannot be exempt from patentability, as TRIPS obliges countries to award patents in all invention fields. This can however be shown that pharmaceutical patents have a strong effect on people's health and sustainability in developed countries.

In its Resolution 2000/7, the Sub-Committee on the Protection of Civil Rights established inconsistencies between human rights and intellectual property rights. The Doha Declaration on the ADPIC Agreement and Public Health acknowledged the importance of public health problems affecting many less developed countries, particularly tuberculosis, HIV / AIDS, malaria, etc. The declaration stresses the need for the TRIPS arrangement to be part of wider global efforts to address these problems. It agreed that security of intellectual property is essential for the creation of novel drugs but also acknowledges the concerns regarding their price impact. The Conference's key achievement was that it decided that the ADPIC resolution does not prohibit Member States from adopting initiatives to protect public health. WTO leaders were obligated to enforce the TRIPS requirement by the year 2000, 2005 or 2016, based on their degree and growth pace. India has been granted an extended amount of time to conform to the TRIPS standard and put up its patent regime. India enacted

the 2005 Patents Reform Act. India for the third time in 2005 changed its legislation to include all of its responsibilities under TRIPS. Before this amendment India allowed generic copies of several drugs to be made. Via this latest law a internationally harmonized drug patent system and drug patents have now been introduced in the pharmaceutical industry.

Discussion

Positivist Intellectual Property history

Territorial time:

The many subject areas of intellectual property emerge at different locations and at different times. These two rules can probably be traced back to the royal privilege-giving system that appears to have existed much of medieval in Europe. The Venetians in 1474 deserve credit with the first properly developed patent law. In England the Monopoly Law of 1623 abolished all monopolies except those created by the "real and first founder" of a "process of production." Revolutionary France acknowledged the rights of inventors in 1791, and in 1790 the United States passed a ban on patents outside Europe. E French Revolution is also associated with the idea that the rights given to human beings (human rights) are intellectual property rights. Actually the Rebellion was much more about freedom of information than the establishment of rights of ownership of information. Under the patriarchal system of privilege that in pre-revolutionary France dominated the production and reading of books large numbers of associated citizens. The French Revolution had brought freedom from the press. The freedom of expression and of the press proclaimed by the Declaration of the Rights of Man was made real before the Monarch's printing privilege was no longer open to printers. Publishing has been through a period of extraordinary dedication by the mainstream. The media of newspapers,

magazines, brochures express a public dialog and exchange of ideas And other ways of ephemeral distribution.

The Global Period

In the foreign age harmonization of intellectual property was a painfully slow affair. Increasingly more developing countries joined the Paris and Berne Conventions after World War II. These conferences ceased to be Western parties, and Western states could be outdone under the one-vote-one-state concept by a coalition of developed countries. Developing countries weren't comfortable simply playing a coalition veto role. They wanted an international system that would cater to their degree of economic growth and so they started throwing their weight around, at least in the eyes of the West. In copyright, India leads, The Stockholm Protocol of 1967 continued to be accepted by developed countries. The agreement aimed to give developing countries greater access to copyright materials. Its adoption caused something of a controversy in international copyright. The Paris Convention also became the focus of the Diplomatic Reform Conferences of 1980, 1981, 1982 and 1984, with developed countries pressing for more liberal mandatory licensing clauses.

Post –TRIPS

In addition, these clauses acted as a blueprint for what could be done on the multilateral level during the Uruguay Round of negotiations protection for intellectual property.. The countries of the Central European Free Trade Agreement have various ways of cooperation and integration on intellectual property law. TRIPS operates under a compliance-fostering hierarchical structure. The WTO Agreement creates a TRIPS Council which shall track the compliance of members with their obligations under the Agreement. The Council's oversight of TRIPS, The strong position of the United States and Europe in protecting intellectual property rights and the prospect of competing under TRIPS being the subject of litigation under the dispute resolution mechanism under the Final Act.

Human rights and intellectual property rights:

Human rights and intellectual property rights which were once in dispute are getting more cooperative now. The two subjects developed together in virtual isolation for decades. Yet international norm building initiatives have begun mapping connections of human rights law and intellectual property laws in the last few years. Since several colonies achieved independence since liberation struggles the term became much more popular with the adoption of the International Declaration of Human Rights in 1948, the definition of Human Rights took on prominence. Intellectual property rights in the 19th century may be said to have been born. Until recently, as it became painfully apparent that these two disciplines influence each other in several respects, these two topics were rarely addressed jointly. Many researchers have acknowledged the contradictions between these two fields in particular over public health and patent protection. They have argued that the gap between them needs to be bridged. Some claim that, according to

Article 27 of the UDHR and Article 15(1) of the ICESCR, intellectual property rights have been acknowledged in human rights treaties and considered as the protection of intellectual property in those treaties. These claims hamper striking the balance between the two regimes. It is clear that the protection of civil rights and intellectual property vary greatly. Although intellectual property rights are statutory rights, civil rights are basic in nature given by government to the owners of intellectual property in exchange for the profits of the invention, while the rights of intellectual property are restricted in nature by time.

The rights of the Declaration are further established in the convention of (1966) International Covenant on Civil And Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). In the cold war atmosphere, led by the former Soviet Union, newly formed independent African and Asian states. By nature the article implies that writers have the freedom to defend their rights. The right recognized in Article 15 is itself an element of a general right, whereas the other two elements are basically rights of access to cultural life and the advantages of scientific advances.

Human Rights and the TRIPS agreement

One of the prominent human rights and intellectual property convergence fields refers to the TRIPS Agreement which was approved as part of the World Trade Organization in 1994. TRIPS, together with other developed nations and countries with prior adherence to copyrights, patents, and trademarks, implemented high minimum standards of protection for all WTO members, including the least known. Non-compliance with the Treaty can be called into question in the WTO's arduous dispute resolution mechanism, in which rulings of the WTO tribunal and the Appellate Body are backed up by trade sanctions. In 2000, the human rights mechanism centered its attention on TRIPS, even as the transitional phases of the protocol for the developed countries in action ended. In August of that year the Sub-Committee on Human Rights Protection and Security adopted Resolution 2000/7 on Civil Rights and Intellectual Property Freedom. The Resolution adopts a dismissive approach on TRIPS. This stresses that "there are potential or actual inconsistencies between the implementation of the TRIPS Agreement and the protection of economic, legal and cultural rights."These issues include the transition of technologies to developed countries, bio-piracy, implications for the right to eat plant breeders' rights and the patenting of genetically modified organisms, the effect on health rights of restrictions on access to patented pharmaceuticals and the protection of indigenous communities' natural resources.

An instrumental view of intellectual property and human rights

This convergence would also enable national and international lawmakers and NGOs to address the more pressing challenge of identifying the interface between human rights and intellectual property with clear, effective and equitable legal norms promoting individual rights as well as global economic wellbeing.. And other rights are

instrumental in ensuring the viability of seeking certain forms of rights. The key point brought forward below is that the privileges generated by enacting intellectual property laws are instrumental privileges. Ideally, these rights should represent the desires and needs defined by people in the vocabulary of human rights, in conditions of democratic control. In this opinion, the protection of intellectual property rights would be driven by human rights; intellectual property rights would be forced into action in the name of human rights. Of example, this definition does not square with the past of intellectual property. It has as much to do with wealthy interests using certain rights to gain their own economic profits as it does to do with parliaments. This will come as no surprise. Economic law theory, public decision theory, argues that law is primarily a Market Process in which lawmakers and interested parties conduct business in a way that subordinates the public interest to the private interest. But the horrendous facts exposed by historians of public choice about this or that piece of law do not mask a larger structural reality regarding how property rights have come to represent humanist ideals in the long sweep of Western states' culture. Three generalizations may be developed through a history that starts around the fifteenth century. States have made growing use of the laws on properties for a number of reasons, both civil and criminal. Property rights have been slowly secured, ever more free from the ruling authority's illegal confiscation. With the advance of contract law, land transactions were managed in a guaranteed manner. Intellectual property (and contract) institutional design issues arise not only with legal or even economic technical issues. As discussed above, property is a tool to reveal deeper notes of political philosophy. Regimes of property should represent certain individual beliefs, wishes and preferences that are central to their morality and policies.

Future human rights and intellectual property trajectories

This is doubtful that the dispute between those who advocate the solution to confrontation and those who claim a coexistence approach to the issue between intellectual property and civil rights will be settled anytime soon. In the opposite, the continued conflict between these two conflicting systems would undoubtedly have four distinct international legal system consequences at least. The first result is an increased willingness to improve soft laws on human rights. For those who advocate the primacy of human rights over intellectual property rights laws, it is important for specifically define which freedoms are being eroded. Just looking at the texts of the Treaties, however, there seem to be few specific disputes, at least under the strict principles of dispute. But the Treaty text alone does not tell the entire story. Human rights laws are particularly dynamic and include several frameworks to establish more legal standards and principles over time. Those who advocate a conflicting approach to intellectual property are likely to force human rights organizations to lay down broad definitions of vague rights in order to comply with explicit, explicitly defined laws. In addition to offering momentum for future wars, this impetus could have a side effect of speeding up the jurisprudential advancement of legal, economic, and cultural

rights which is an aspect of human rights law still underdeveloped. The protection of intellectual property users as global rights holders is a second paradigm shift that could emerge. Low consumer status is assigned to individuals and groups who use these items. Conversely, a civil rights approach to intellectual property provides these consumers with a conceptually equal position for creators and owners. This expressive reframing is not just a matter of semantics. It also defines the techniques for negotiations between nations. By referring to the principles that have won the imprimatur of intergovernmental organizations of which many States are parties, policymakers will more credibly argue that the rebalancing of intellectual property rules is part of a legitimate attempt to harmonize the two overlapping systems of globally accepted freedom. This relates to the third dimension of the current dispute between human rights and intellectual property – the articulation of 'absolute conditions' for the protection of intellectual property. The Treaties of Berne to Paris on ADPIC all lead to the articulation of "appropriate conditions." The prospects for the incorporation of human rights into the WTO are much more unclear. ADPIC and Public Health Declaration⁵⁸ adopted in November 2001 clearly represent human rights advocacy in the area of access to medicines. In addition, the Doha Declaration of Ministers instructs the ADPIC Council to investigate the relationship between [TRIPS] and the Convention on Biological Diversity, the preservation of traditional knowledge and folklore, and any related new issues raised by the Participants. However, the United States has so far blocked the CBD Secretariat's call for observer status in the Council, leaving it unknown. More precisely, the failure of trade talks at the Cancún, Mexico WTO ministerial meeting in September 2003 signals the possibility of fresh rifts between developed and developing countries that could make human rights deals more complicated – driven or otherwise – by human rights.

Conclusion

While the WTO and WIPO negotiations would certainly be divisive, trade and intellectual property leaders will support these bodies rather than oppose opening them up to intrusion on human rights. Allowing more opportunity to aerate the human rights viewpoint on issues related to intellectual property will improve the legitimacy of such organisations and promote the introduction of an exceedingly complicated collection of legal requirements covering the same particular subject matter. This convergence will also enable national and international legislators and NGOs to tackle the more urgent challenge of creating an interface between human rights and intellectual property with transparent, efficient and equitable legal norms that promote individual rights as well as global economic well-being.

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