

**ACADEMIC FREEDOM, INTELLECTUAL PROPERTY AND HUMAN RIGHTS OF  
EDUCATORS IN THEIR DIGITAL LEARNING CREATIONS (By Dr. Atty. Noel G.  
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*“Truth and understanding are not such wares as to be monopolised and traded in... We must not think to make a staple commodity of all the knowledge in the land, to mark and license it like our broadcloth and our woolpacks”.*

*John Milton, Areopagitica (1644)[1]*

*(N)o one sells or mortgages all the products of his brain to his employer by the mere fact of employment.[2]*

**I. INTRODUCTION: A “HUMAN INTELLECTUAL PROPERTY RIGHT”**

The human rights perspective in appreciating and critically analyzing the issues concerning intellectual property rights, particularly copyright, over the digital learning objects produced by educators in the course of their employment has not been expressly nor extensively articulated in legal literature.

This perspective has not been applied in any considerable manner to what has been termed as “traditional materials” that educators produce in the course of their employment with the university like lectures and lecture notes, and scholarly works that include books, journal articles, conference proceedings, monographs, and other publications they write [3] that are “digitized” or

are born digital and made accessible on the internet or the institution's intranet. These materials are the so-called online "tools of trade". Digitized or not, all educators produce some or most of these materials in their academic lives, not merely for employment reasons, but because they are the universal instruments educators use to teach, communicate and disseminate their findings to students, their colleagues and the public.

Although many Intellectual Property Policies of universities pay lip service to the tradition of recognizing the copyright of educators over their works, this recognition has been whittled down significantly by many qualifiers or provisos that are based on the work for hire doctrine. This doctrine, which basically states that the work done by an employee in the course of his or her employment is owned by the employer, has allowed universities to claim copyright ownership of educators' intellectual property, especially on digital learning creations. The broad usage of this doctrine, can lead to the detriment of the academics' intellectual property rights and affect their academic freedom to teach, research, and publish, and can even affect their whole livelihood.

The book brings to the fore the so-called "educator exception" to the work for hire doctrine. Unlike the said doctrine, this exception lacks positive statutory basis. The current international intellectual property rights treaties and conventions, particularly those involving copyright and related rights, provide no specific protection for the intellectual property rights of educators in their online creations.

While the academic freedom approach taken under the UNESCO/ILO 1997 Recommendation concerning the Status of Higher Education Teaching Personnel (1997 Recommendation) [4] as well as the international documents concerning education and educators, support the human rights perspective, they do not offer any specific guideposts for the actual protection of the rights of educators over their creations.

Dr. Atty. Ramiscal strives to define a human rights perspective to the intellectual property created by educators in the context of human rights instruments that include the International Covenant on Economic, Social and Cultural Rights (ICESCR) [5] and the General Comment of the Committee on Economic, Social and Cultural Rights (General CESCR Comment) [6].

This approach conceived and termed by Dr. Atty. Ramiscal as the “human intellectual property right” is applied in examining the nexus between academic freedom, human rights and intellectual property rights of educators over their online creations. Dr. Atty. Ramiscal maintains that the educators’ ownership over their digitized creations is an inherent human right they have that must be recognized and protected. It is also contended that this approach would allow educators to choose how to disseminate their works by using mechanisms employed by certain movements, like the Copyleft, Creative Commons, and the Free Art movements.

The book’s ultimate purpose is to establish the need to recognize an “educators’ exception” to the work for hire doctrine, particularly for online creations, that must be articulated in an international standard setting instrument like the 1997 Recommendation Concerning the Status

of Higher Education Teaching Personnel that the UNESCO and ILO have jointly pushed for recognition amongst their members.