

**ACADEMIC FREEDOM, INTELLECTUAL PROPERTY AND HUMAN RIGHTS OF
EDUCATORS IN THEIR DIGITAL LEARNING CREATIONS (By Dr. Atty. Noel G.
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**III. INTERNATIONAL LEGAL REGIMES FOR INTELLECTUAL PROPERTY
RIGHTS**

7. The Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention for the Protection of Literary and Artistic Works, which was the earliest and the most enduring Convention on copyright, protects “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature” [51]. It is the first international document to recognize the moral rights of an author over their literary and artistic works. The moral rights include the right to claim authorship of the work, commonly known as the right of attribution, the right to disown authorship of work that one did not create, and the right of integrity, which consists of the right to object to any distortion, mutilation or other modification of the work that would prejudice the author’s honor or reputation. These are independent of their economic rights and the author can claim them even if he or she has already transferred the economic rights over the work to another [52].

It is also the first to formally establish several limitations over the exercise of the rights associated with copyright, particularly the economic rights of the author like the right to reproduction [53], the right to authorize the performance of their works [54], the translation [55] and adaptation of the same [56]. One of these left for governments of countries who ratified the Convention, the possibility of using these works for free “by way of illustration in publications, broadcasts or sound or visual recordings for *teaching* (italics supplied), provided such utilization is compatible with fair practice” [57]. But even in such case, the moral right of attribution must be observed [58]. No special protection was granted to the intellectual property rights of academics that work within educational institutions.

8. The Universal Copyright Convention

The Universal Copyright Convention [59] that originally came into force on September 16, 1955 was revised on July 24, 1971 [60]. It was subservient to the Berne Convention [61] and it did not vary greatly from the latter in terms of the lack of specific protection for the intellectual creations of educators.

9. WIPO Copyright Treaty

The World Intellectual Property Organization (WIPO) spearheaded the revision of the Berne Convention, which led to the development of a separate treaty called the WIPO Copyright Treaty [62]. This treaty emphasized “the outstanding significance of copyright protection as an incentive for literary and artistic creation” but also noted the need to balance the rights of authors with the public interests, one of which is education [63]. To this end, the parties to the Treaty are allowed to provide limitations and exceptions to the rights granted to authors provided such do not prejudice the legitimate interests of the author and do not conflict with the “normal exploitation of the work” [64] which unfortunately is not defined. It also does not give any clear indication of how works of educators can be protected despite the limitations on their rights as creators of intellectual works.

10. The Trade Related Aspects of Intellectual Property (TRIPS) Agreement

The Trade Related Aspects of Intellectual Property (TRIPS) Agreement arose out of the General Agreement on Tariff and Trade (GATT) that was negotiated during the 1994 Uruguay Round of trade negotiations. The TRIPS Agreement made the issue of compliance with intellectual property rights safeguards a trade issue. It clearly established the economic value of intellectual property rights. Its ratification by countries is also a precondition for being a member of the World Trade Organization (WTO). Errant WTO members who do not follow the TRIPS conditions can be disciplined through trade sanctions [65]. It essentially adopted the major provisions of the Berne Convention with the exception that it did not expressly recognize moral

rights [66]. The copyright and related rights provisions in the TRIPS Agreement did not establish any linkage between intellectual property rights, the academic freedom and human rights of educators.