

**ACADEMIC FREEDOM, INTELLECTUAL PROPERTY AND HUMAN RIGHTS OF EDUCATORS IN THEIR DIGITAL LEARNING CREATIONS (By Dr. Atty. Noel G. Ramiscal, All Rights Expressly Reserved)**

**IV. THE INTERNATIONAL EDUCATION INSTRUMENTS**

**11. 1966 UNESCO Recommendation on the Status of Primary and Secondary Teachers**

It is interesting that the 1966 UNESCO Recommendation on the Status of Primary and Secondary Teachers made it the responsibility of teachers and their organizations to “participate in the development of new courses, textbooks and teaching” materials [67] without providing for the protection of the intellectual property rights of the teachers who create these materials.

**12. The 1974 Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms**

The 1974 Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, encouraged Member States to prepare teachers “to take an active part in devising programmes of international education and educational equipment and materials” [68] without mentioning the intellectual property rights of these teachers.

### **13. The 1974 Recommendation on Vocational and Technical Education and the 1989 Convention on Technical and Vocational Education**

The 1974 Recommendation on Vocational and Technical Education stressed the importance of preparing technical and vocational teachers to create and produce teaching materials, especially in cases where there is a shortage of such materials [69]. The succeeding 1989 Convention on Technical and Vocational Education obligates participating States to provide persons teaching in technical and vocational education with information and training in educational innovations and the “opportunity to participate in relevant research and development” [70]. Neither provided any information on making these teachers aware of their intellectual property rights.

### **14. The 1997 Recommendation Concerning the Status of Higher Education Teaching Personnel**

The 1997 Recommendation Concerning the Status of Higher Education Teaching Personnel (1997 Recommendation) is the sole international document that catalogues and sets out the rights related to the academic freedom of educators in higher education [71]. But it did not recognize the essential link between the protection of intellectual property rights of educators and their academic freedom. The 1997 Recommendation merely noted that the “intellectual property of higher education teaching personnel should benefit from legal protection, and in particular the protection afforded by national and international copyright law” and limited this only to the publication and dissemination of their research [72].

Knowledge production by educators and the protection of such creation through intellectual property regimes were considered “integral part(s) of academic freedom” by the Joint ILO/UNESCO Committee of Experts on the Application of Recommendations concerning Teaching Personnel (CEART) [73]. However, CEART has not presented any substantial proposal to actualize this realization.

### **15. Criticism of the 1997 Recommendation**

In not acknowledging or recognizing the crucial relationship between academic freedom of educators, their human rights and the protection of their intellectual property rights, Dr. Atty. Ramiscal maintains that the 1997 Recommendation has proven grievously deficient in protecting completely the academic freedom of educators, specially in the context of e-learning.

The 1997 Recommendation has followed the path of least resistance by simply leaving the issue of intellectual property rights protection for educators’ creations to be worked out amongst individual nations, and the educational agencies and institutions in these nations, who may not have or do not follow the same standards. The lacuna of standards can lead to great abuses to the academic freedoms of educators who create digital content for higher e-learning.