

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

**V. THE HUMAN RIGHTS PERSPECTIVE IN THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS**

The great deficiency in the 1997 Recommendation is disturbing given the human rights framework that it has taken with respect to the other social, political and economic factors that affect the status of educators everywhere.

The international protection of intellectual property, or what is known as the “products of the mind”, has an explicit human rights component which Dr. Atty. Ramiscal argues, can be traced to the provisions of several international documents.

16. The American Declaration of the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man (ADRDM), which was approved at the Ninth International Conference of American States in Bogotá, Colombia, in April 1948, was

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the first international document that endorsed the human right of an individual to have his/her intellectual property rights protected. The document declared:

Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries. He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author [74].

17. The Universal Declaration of Human Rights

More than six months later, the Universal Declaration of Human Rights (UDHR) was forged under the auspices of the United Nations. It proclaimed:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author [75].

The driving force behind the adoption of this provision was the desire to harmonize the UDHR with the ADRDM. The Mexican representative to the UDHR drafting committee “argued that the

United Nations needed the moral authority to protect all forms of work, intellectual as well as manual, so as to safeguard intellectual production on an equal basis with material property” [76].

18. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind

In 1975, the UN General Assembly adopted “The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind” which was taken from a revised draft originally submitted by Eastern and Southern States, who were concerned about the misuse of technology to the detriment of fundamental freedoms [77]. It provided:

All States shall take measures to extend the benefits of science and technology to all strata of the population and to protect them, both socially and materially, from possible harmful effects of the misuse of scientific and technological developments, including their misuse to infringe upon the rights of the individual or of the group, particularly with regard to respect for privacy and the protection of the human personality and its physical and intellectual integrity [78].

This document, while it did not expressly mention the intellectual property rights system, alluded to it by mentioning the protection from infringement of the human personality and its intellectual integrity, which is expressed through intellectual creations.

19. The International Covenant on Economic, Social and Cultural Rights

The most legally effective instrument, in terms of binding force, which reiterated the protection for intellectual property rights of the author, is the International Covenant on Economic, Social and Cultural Rights (ICESCR). It took effect in 1976, ten years after it was adopted by the UN General Assembly and opened for signatures, ratification and accession. Its Article 15 provided that:

The States Parties to the present Covenant recognize the right of everyone:

a) to take part in cultural life;

b) to enjoy the benefits of scientific progress and its applications;

c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” [79]

The ICESCR binds the participating States to take steps “necessary for the conservation, the development and the diffusion of science and culture” [80], and to “respect the freedom indispensable for scientific research and creative activity” [81], that can lead to international cooperation and contacts in scientific and cultural fields which benefit everyone [82].

Finally, the ICESCR provisions were adopted with a few added words on the field of art, in Article 14 of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador" [83].