VIII. RELATION OF THE HUMAN INTELLECTUAL PROPERTY RIGHTS APPROACH TO OTHER THEORIES

Dr. Atty. Ramiscal submits that the human rights principles discussed in the international documents relative to human rights and intellectual property rights also relate to several socio-technological and learning theories which have not been observed or noted before. It is imperative that they be analyzed to further clarify the legal assumptions that are embedded in the human intellectual property rights approach that Dr. Atty. Ramiscal has conceived.

24. The Principle of Expectations

In the virtual world of mice and humans, some things are still imperatively observed as essential in the conduct of business and other affairs. One of these is the tendency of humans to rely on their expectations in the fulfillment of certain conditions toward the accomplishment of their goals, dreams and tasks. In the world of *academia*, universities, educators, and others who have a

stake on the proper functioning of universities as seats of learning, do operate on a set of expectations.

Educators enter universities with a set of thoughts and beliefs as to how they can be effective facilitators of learning, which is after all the original main purpose of a university. Indeed, "in order for such institutions to operate there must be, at any given time, some general understanding, rough perhaps, of what is *expected* of those who work and teach in a university, and this understanding cannot be too widely at variance with the claims the university makes to those who support it and to prospective students" [102]. In fact, the 1997 Recommendation articulates the expectations of being a member of the education profession.

> "Teaching in higher education is a profession: it is a form of public service that requires of higher education personnel expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research; it also calls for a sense of personal and institutional responsibility for the education and welfare of students and of the community at large and for a commitment to high professional standards in scholarship and research" [103].

The wording of these principles placed crucial emphasis on the role of educators who are held equally responsible (with their institutions) for the success or failure of the cause of learning.

A theorist believes that the academic freedoms of educators and their basic human rights can be defended on the ground "that it is unjust for persons or groups to prohibit someone from doing, or to punish him for doing, what they have demanded or expected of him" [104].

Educational institutions expect educators to seek and ferret out the truth in their jobs. Academics expect to be given the freedom and right to seek, express, teach and publish the truth as they see it, in their disciplines. If they are rewarded instead with recrimination, discrimination and termination, then the whole learning enterprise suffers and injustice occurs. Without these expectations, universities would be bereft of the "goal of attaining and disseminating truth (and) are not institutions suitable for academics" [105]. Without these expectations, universities "forfeit their right to be called *universities* – or perhaps even *educational* institutions of *higher learning*" [106].

The 1915 AAUP Declaration emphasized that a university which denied academic freedom to its faculty members is nothing but a proprietary institution that exists "for the propagation of specific doctrines prescribed by those who have furnished its endowment" and is not worthy of public support [107].

As part of their obligations arising from their expectations, universities must allow educators to "have time to think and facilities to work with…It is when the teacher begins to show the

imperfections, the obsolete elements in accepted views and traditions, and to explore the possibilities outside the accepted patterns that academic freedom becomes meaningful and essential to ensure the freedom of the scholar, to prevent the Philistines from interfering and stopping the free flow of ideas" [108].

Educators also have obligations to fulfill. "In accepting university employment they have implicitly committed themselves to fulfill the designated expectation. Academics thus have obligations to teach and publish what they honestly believe to be true" [109]. Most importantly, they are obligated to think independently. "To require them to stop thinking or to think like everybody else is to defeat the purpose of their lives" [110]. The very right to think and to act and create on the basis of one's thoughts and purposes are great components of the very human rights to life and to live.

25. Expectations from Educators in E-Learning

There have been suggestions that the venerable vocation of educating is inevitably set for "demise" [111]. The globalization and digitization of knowledge from the corporatist viewpoint will make human educators redundant or unnecessary. Computers will replace humans as "virtual tutors" or "artificial learning agents" to herald a new era where even the physical

structures that for now pass as centers of learning will just become tourist attractions, theme parks of what used to be campuses that housed intellectual revolutions [112].

However, the Report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning the Status of Teaching Personnel (CEART), stands firm in its conclusion that the function of a flesh and blood teacher as a role model "remains central in today's world and cannot be replaced by technology" [113]. In fact, in the next decade, there is a projected shortage of at least 15 million qualified teachers [114].

At present, the most prevalent uses of the Internet by educators are for research and communication which complements their online teaching. In an American study of the Net's impact on higher education faculty released several years ago, it was revealed that 83% of the 2,316 educators surveyed in 48 higher learning institutions, felt they spent less time in the library because they do much of their research using the Internet [115]. Some 89% reported accessing email at their workplace and nearly a third of them declared that they check for email messages "almost continuously when online" [116]. In terms of communicating with their students, 55% of the educators stated they use course websites and web boards, 37% cited chat rooms and 6% declared using email lists. The most popular form of internet communication with students is individual email, which 92% of all those surveyed have used [117]. 76% of the educators who use individual emails reported that "it has enabled the expression of ideas that their students may

not have expressed in class due to peer pressure, fear of embarrassment, or simply a lack of class time for all students' ideas to be expressed" [118]. One educator brought up an important cultural observation that non-American students may prefer to talk with the educator via the Internet rather than in class, as compared to their American counterparts [119].

Studies like this show the consensus that "(t)eachers are…crucial to the successful use of ICT. They will be required and should be encouraged to assume new roles and responsibilities for ICT to improve the quality of education and access to education by learners in formal, non-formal and adult education settings" and for which they should be given extensive training, time and resources to plan, create and, or teach their courses [120].

The training, time and resources educators are given can only redound to the betterment of their exercise of their academic freedom to teach as well as secure and further their professional life's purpose. But universities and learning institutions cannot make the grant of these resources to educators as the main or sole justification to own the copyright over the digital learning objects educators create for that would defeat the human rights of educators over their intellectual property.

26. Educators as Change Agents: Innovation Diffusion Theory

The Innovation Diffusion Theory postulates that innovation is "communicated through particular channels, over time, among the members of a social system" [121]. The acceptance of an innovation, which can be anything from an idea to a tangible product, undergoes a certain process. The innovation must come within the knowledge of potential adopters, who must be persuaded of the merits of the innovation in order for them to make a decision to implement the innovation. After they implement it, they can decide to confirm or re-affirm their decision to accept or discontinue the innovation in favor of something better [122]. The potential adopters make their decision on the basis of the current innovation's relative advantage over prior or existing innovations, its trialability for a limited period, the observability or visibility of its results, its compatibility with existing values and practices and its degree of complexity, that is, it must not be too difficult to understand or grasp [123].

The theory also posits that there are potential adopters who belong to different categories. First are the innovators. These are the "venturesome" people who have the abilities to "understand and apply complex technical knowledge" and can "cope with a high degree of uncertainty about an innovation" [124]. Then there are the Early Adopters, who are successful, respectable members of society, exercise the "greatest degree of opinion leadership" and serve as role models [125]. The Early Majority Adopters seldom hold influential positions but they interact frequently with

their peers and they engage in deliberate thought before adopting an innovation [126]. The Late Majority Adopters are often skeptical and cautious people who succumb to pressure from their peers or out of economic necessity when they adopt an innovation [127]. The Laggards tend to be suspicious of any innovations. They tend to be isolated, have "no opinion leadership" and their "innovation decision process is lengthy" [128].

E-learning entails demands from educators which are different from those in conventional classroom settings. In e-learning, communities of learners are brought together through computer supported network systems and they work for a common learning goal or purpose. This process is often termed "collaborative learning". In this environment, the educator's role will change from that of being an instructivist, "spoon feeder" or depositor [129] of knowledge, to that of a constructivist "expert learner, who can facilitate students' learning and information searching" [130].

A constructivist educator believes that learners are actively engaged in the learning process and they construct knowledge "based on what (they) know" [131]. The learning is student centered and what educators do is "organize information into conceptual clusters of problems, questions and discrepant situations in order to engage the students' interest (and)…assist (in) developing (their) insight and building of tacit knowledge" [132]. This is especially true in higher level

learning where students have to take responsibility for their learning and manage the information they are confronted with [133].

Educators in these environs are expected to be interested in innovation and technology, are creative and enthusiastic people who are possessed with the desire and capability to work with others, and must have "some technology skills and the ability to adapt quickly to change" [134]. They are "now expected to incorporate instructional technology into living practice with IT skills leading the way to success for their students" [135].

27. Innovation Diffusion, Academic Freedom, Human Rights

Educators are often at the forefront of social and cultural change. Dr. Atty. Ramiscal contends that the educators' status, knowledge and occupation make them favorably situated to be Innovators, "the progenitor of new ideas; the leading edge researcher, thinker, or inventor" [136], or "change agent(s)" who are "idea broker(s) for the Innovator; the promoter(s) of new ideas, solutions, directions; the innovation marketer(s) and communicator(s)" [137], or at the very least, "transformers" who are early majority adopters and promoters of "positive change" in their organizations [138].

The "Statement on Academic Freedom, University Autonomy and Social Responsibility" by the International Association of Universities (IAU) makes this point even more evident by declaring that "(a)cademic (f)reedom engages the obligation by each individual member of the academic profession to excellence, to innovation, and to advancing the frontiers of knowledge through research and the diffusion of its results through teaching and publication" [139]. The 2003 CEART Report on the Application of the 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel also recommended "infusing technology into the entire teacher education program" in order to prepare educators for their new responsibilities as users and promoters of ICT in learning [140].

There is anecdotal evidence that educators who *are* innovators, trying to spearhead the way to the diffusion of internet innovations by working on Internet related projects encounter resistance, challenges and alienation from their colleagues and administrators who cannot follow their vision [141]. Such consequences are unfortunate and should be urgently addressed.

Implicit in the expectation drawn from the IAU Statement and explicitly highlighted in the 2003 CEART Report [142], is the obligation of the university to support and give educators the freedom to explore and learn the new technologies at their disposal so they can partake of the e-learning innovation process, and become innovators or early adopters of the technologies as well.

It is in this way that the Innovation Diffusion theory strengthens and enhances the academic freedoms of educators in the digital age, and supports their basic human right to earn a living.

The Innovation Diffusion theory also supports the human impetus of educators to harness the technologies they have at their disposal to create digital learning objects that would pave the way for better teaching, learning and understanding the world for their students. These digital learning objects which come from the labors of their brains, hands and (sometimes) voices should be recognized first as their intellectual property, and not those of the university or learning institutions. To automatically deny them their economic and moral rights over their intellectual creations just because of their employment would be to deny them their human right over their creation and would be a disincentive to create.

28. Educators as Communicators: The Conversation Theory

In e-learning, educators are expected to expend time communicating with their students online, particularly by email or learning groupware. They have to initiate, monitor and sustain the collaborative online activities that students participate in [143]. Educators must understand "communication in the medium of the virtual learning environment", and this entails that they be expert online communicators, for communication "is the actual brick and mortar" of the e-learning community [144].

This expectation can be gleaned from the conversation theory of Gordon Pask who developed this by using a cybernetic framework [145]. He envisioned learning to be a series of conversations about any topic, the purpose of which is "to make knowledge explicit" [146].

Learning starts when two cognitive systems, for example, an educator and a learner, agree to start conversing about any topic with the aim of reaching an understanding, or an operational or practical knowledge of the matter. The discussion that ensues, which originally started about one topic, can progress to other topics, grow and take on different dimensions as the conversationalists draw from their experiences and from higher level concepts like "memories" [147]. Error is prevented by teachback or feedback mechanism, where the conversationalists "hash out their differences over a concept, correcting each other's misconceptions" [148]. The trails or threads of conversations belong to what can be considered as a "conversational domain" or an "entailment mesh" that "provide the symbolic environment in which the original insights can be reproduced and further conversations can take place and evolve" [149].

Pask's conversational theory has been applied to the online learning community. An illustration of his theory is the online forum, like usenet, listserv, or e-learning interest groups, where educators, students, and others engage in multiple conversations about specific concepts or topics, and the views or interpretations that gain the most adherents or acceptance are archived in a conversational domain or entailment mesh, which serves as a knowledge base for the

community. This is sometimes designated as FAQ (Frequently Asked Questions) [150]. His theory has also been instantiated in many World Wide Web based conferencing systems that have been developed over the years [151]. Examples of these are the Virtual U [152] and WebCT [153].

29. Conversation Theory, Academic Freedom, Human Rights

Dr. Atty. Ramiscal contends that the conversation theory supports the human right of expression and academic freedom of educators to teach, research, express, create content and disseminate their intellectual creations in a free online learning environment. It assumes the freedom of educators to express their knowledge and interpretations of concepts and their creations.

The conversation will not progress if the parties, particularly educators are constrained by policies or restrictions that have nothing to do with learning. For instance, consider the educator worrying if his/her publication of an extract from his/her own research would violate the copyright policy of the University, under which the University owns everything the educator creates during his/her employment.

By way of analogy, an illustrative example is the case of American Professor Daniel Bernstein of the University of Illinois, Chicago, whose academic work on cryptology has been the subject of legal disputes involving the US government [154] on account that his intellectual creations may breach State national security. Professor Bernstein, in one of his pleadings, claimed that because of the legal controversy regarding his work, he was constrained from even sharing his findings with educational listserve and email groups that he is a member of, because of the possibility that this may be construed by the US Government to inspire terrorist elements that might be lurking in these groups who might use his findings to further their terrorist activities [155].

Self-censorship, be it out of concern for violating the University's copyright policy or incurring the ire of the State, in the expression and dissemination of knowledge that the conversationalists have, is anathema to the learning and understanding of the whole online learning community. This community is made up of individual members, including educators, who contribute to the learning process by posting their conversations and the "lurkers" within the community, or those who silently observe and access the archives for the collective wisdom of the group [156]. Censorship also affects the human right of educators to express and share their knowledge to the relevant stakeholders of the learning public, who have the right to benefit from the dissemination of such knowledge.