
1. Mapping the interface between human rights and intellectual property

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There are now a broad range of political, economic, social, practical and philosophical issues that straddle the intersection of human rights and intellectual property. These fascinating and challenging issues are attracting increasing attention from judges, government officials, attorneys and scholars, whose activities are mapping the contours of a rapidly changing legal landscape.

A personal anecdote illustrates how far the relationship between the two fields has evolved. When I started my academic career in the late 1990s and began to write about the two fields, a senior colleague took me aside and said: ‘These areas of law and policy have almost nothing in common, and the relationship between them isn’t very interesting. Focus your scholarship on only one of these legal regimes. You shouldn’t attempt to make contributions to both.’

I had two responses to this well-meaning advice. First, I acknowledged the historical isolation of two fields. But I pointed out that the foundational document of international human rights law, the 1948 Universal Declaration of Human Rights, provides that everyone has the right ‘to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author,’ as well as the right ‘to enjoy benefits of scientific progress and its applications.’¹ These references – long overlooked by governments, courts and commentators – reveal that the goals of incentivizing private innovation and promoting public access that underpin most intellectual property laws have also been concerns of the human rights movement since its founding. My second response to my senior colleague was to explain that my writing about both fields exposed me to the experiences and insights of two distinct legal communities who rarely interacted with each other. By straddling the divide between these groups, I learned from both and hoped to identify interesting legal issues that other scholars might have overlooked.

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¹ Universal Declaration of Human Rights (UDHR), GA Res. 217A, GAOR, 3rd Regular Session, 183rd plenary meeting, UN Doc. A/810 (12 December 1948), Article 27. Essentially the same provisions appear in the International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, 993 UNTS 3, Article 15(1)(b) and (c). For an analysis of the drafting history of these provisions, see Aurora Plomer, ‘The Human Rights Paradox: Intellectual Property Rights and Rights of Access to Science’, 35 *Hum. Rts. Q.* 135 (2013).

Fifteen years later, the legal landscape looks very different. Few observers today would doubt the relevance of analyzing the intersection of human rights and intellectual property. Consider a few key developments in each field.

In the intellectual property (IP) regime, the subject matter and scope of protection have expanded rapidly in treaties and in national laws – including the laws of developing countries – in response to new online information technologies, the incorporation of IP into the World Trade Organization (WTO) in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),² and the adoption of maximalist IP protection standards and robust enforcement mechanisms in plurilateral, regional, and bilateral ‘TRIPS Plus’ treaties.³ In the human rights regime, the changes include increased attention to indigenous peoples’ rights and traditional knowledge; the adverse consequences of expansive IP protection rules for economic, social, and cultural rights; a growing awareness of the human rights responsibilities of multinational corporations; and attempts by those same corporations to invoke the human right of property as an alternative legal basis for protecting intangible knowledge assets.⁴

A few recent examples highlight the magnitude and rapidity of these changes:

- In early 2013, the European Court of Human Rights (ECtHR) issued two important judgments rejecting, on freedom of expression grounds, challenges to the criminal prosecutions of photographers who distributed fashion photographs of Paris runway shows,⁵ and the founders of Pirate Bay, one of the world’s largest file sharing websites.⁶ The outcomes of these cases is less significant than the ECtHR’s reasoning, which for the first time affirmed that the enforcement of IP laws interfere with the right to receive and impart information and ideas and must therefore be prescribed by law and necessary in a democratic society for the achievement of certain societal aims, such as the rights and freedoms of others. The decisions suggest that Strasbourg judges may one day conclude that national IP laws transgress these principles and thus violate the right to freedom of expression protected by the European Convention on Human Rights (ECHR). At the same time, the ECtHR has repeatedly affirmed that the right of property

² Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, 1869 UNTS 299.

³ These treaties are referred to as ‘TRIPS Plus’ because they (1) contain IP standards more stringent than those found in TRIPS; (2) oblige developing countries to implement TRIPS fully before the end of their transition periods; or (3) require such countries to accede to or comply with other multilateral IP agreements. Genetic Resources Action International (GRAIN), ‘TRIPS-Plus’ through the Back Door: How Bilateral Treaties Impose Much Stronger Rules for IPRs on Life than the WTO, available at: <<http://www.grain.org/docs/trips-plus-en.pdf>> (accessed 15 July 2013).

⁴ For additional discussion of these and other recent trends in the two regimes, see Laurence R. Helfer and Graeme W. Austin, *Human Rights and Intellectual Property: Mapping the Global Interface* (2011, Cambridge University Press), 34–64; Peter K. Yu, ‘Intellectual Property and Human Rights in the Nonmultilateral Era’, 64 *Florida L. Rev.* 1045 (2012).

⁵ *Ashby Donald and Others v. France*, App. No. 36769/08, ECtHR (10 January 2013).

⁶ *Neij and Kolmisoppi v. Sweden*, App. No. 40397/12, ECtHR (19 February 2013).

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encompasses all forms of IP held by both individuals and corporations, and that in appropriate circumstances it will find a violation of that right and award damages.⁷

- In June 2013, the World Intellectual Property Organization (WIPO) convened a diplomatic conference to negotiate the text of a new treaty to facilitate access to copyrighted works for individuals who are blind or visually impaired. The treaty is the first international instrument devoted to codifying exceptions and limitations to IP rights.⁸ It also fulfills an obligation of states parties to the UN Convention on the Rights of Persons with Disabilities to ‘take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.’⁹
- Special Rapporteurs appointed by the UN Human Rights Council have issued trenchant critiques of expansive IP protection and enforcement measures and have analyzed the adverse consequences for the rights to freedom of expression, food, health, and the right to enjoy the benefits of scientific progress and their applications.¹⁰
- A growing number of national courts in Latin America, Africa, and Asia have recognized a right of access to essential medicines, including drugs protected by pharmaceutical patents. In response, governments have adopted measures to facilitate such access, including by issuing compulsory licenses that enable the production of generic medicines at reduced costs.¹¹

⁷ E.g., *Anheuser-Busch v. Portugal*, App. No. 73049/01, ECtHR (Grand Chamber) (11 January 2007); *Balan v. Moldova*, App. No. 19247/03, ECtHR (28 January 2008). For additional discussion, see Laurence R. Helfer, *The New Innovation Frontier? Intellectual Property and the European Court of Human Rights*, 49 *Harv. Int’l L.J.* 1 (2008).

⁸ On 27 June 2013, a WIPO diplomatic conference adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled, VIP/DC/8 (Marrakesh Treaty), available at: <<http://www.wipo.int/dc/2013/en/>>.

⁹ United Nations Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/106 (adopted 13 December 2006), Article 30.3. The first paragraph of the Marrakesh Treaty’s preamble recalls ‘the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.’

¹⁰ The right to enjoy the benefits of scientific progress and its applications, Report of the Special Rapporteur in the field of cultural rights, UN Doc. A/HRC/20/26 (14 May 2012) (prepared by Farida Shaheed); Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (16 May 2011) (prepared by Frank La Rue); Seed policies and the right to food: Enhancing agrobiodiversity, encouraging innovation, Report of the Special Rapporteur on the right to food, UN Doc. A/64/170 (23 July 2009) (prepared by Olivier De Shutter); Addendum: Mission to the World Trade Organization, Report of the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, UN Doc. E/CN.4/2004/49/Add.1 (1 March 2004) (prepared by Paul Hunt).

¹¹ E.g., Rochelle Dreyfuss and César Rodríguez-Garavito (eds), *Balancing Wealth and Health: Global Administrative Law and the Battle Over Intellectual Property and Access To Medicines in Latin America* (2013, Oxford University Press); Alicia Ely Yamin and Siri Gløppen

These and other developments have resulted in a rapidly expanding zone of intersection between the human rights and IP regimes. One overarching goal of my research is to demonstrate the inevitability of the engagement between these fields. A second objective is to consider, from a normative perspective, how human rights and IP laws and policies should intersect if one accepts that connections between the two regimes are unavoidable and are grounded on a common set of core values.

The absence of a settled normative framework for understanding the relationship between human rights and IP has led some commentators to argue in favor of fortifying the boundaries between the two regimes. These commentators have raised three plausible reasons for maintaining the clinical isolation of the two fields, none of which is ultimately persuasive.

First, the legal communities in a regime often speak very different languages. Intellectual property scholars apply the analytical tools of utilitarianism and welfare economics to evaluate the tradeoffs between providing incentives to create and innovate while encouraging public access to works protected by IP rights. Human rights advocates, in contrast, seek to delineate the negative and positive duties of states to respect and promote fundamental freedoms for all individuals. Seen from this perspective, to label something as a human right implies a rhetoric of absolutes and unconditional entitlements that is ill-suited to the rapidly changing technological and economic landscape in which IP rules operate.

A second explanation for resistance to the intersection of the two fields is a skewed perception of each regime as it actually exists as compared to what observers mistakenly believe each regime requires. For example, human rights advocates sometimes express the fear that corporations and other business entities will invoke the human right of property to lock in expansive legal protections for IP products. Conversely, firms whose business models depend on IP fear that ambiguous and elastic legal standards – such as the ‘respect, protect and fulfil’ framework developed by the UN Committee on Economic, Social and Cultural Rights (CESCR)¹² – are in fact thinly disguised efforts to encourage government intervention in private innovation markets and to radically scale back, or even abolish, established forms of IP protection.

Anxiety about the fragmentation of international law and the resulting uncertainty for states’ legal obligations are a third reason invoked for keeping human rights and IP apart. These concerns are exacerbated by differences in the enforcement powers of international institutions. Since the adoption of the TRIPS Agreement in the mid 1990s many high-profile IP controversies have been adjudicated within the WTO dispute settlement system, which authorizes trade sanctions against countries that fail to live up to their treaty bargains. No similarly robust enforcement mechanisms exist for multilateral human rights treaties. Some critics of IP protection see this imbalance as

(eds), *Litigating Health Rights: Can Courts Bring More Justice to Health?* (2011, Harvard University Press).

¹² E.g., CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2000/4 (11 August 2000).

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subordinating compliance with human rights to compliance with TRIPS in areas where the two regimes overlap.¹³

Although I take these concerns seriously, they do not provide sufficient reasons to maintain a barrier between the two regimes. The sustained attention devoted to IP issues over the last decade by international human rights courts, treaty bodies, and Special Rapporteurs reveals that concerns about human rights absolutism are overblown. These developments also demonstrate that even nonbinding norms can exert significant influence on state behavior in ways that moderate the risks of fragmentation. Finally, the engagement between the two regimes is well advanced and would be difficult if not impossible to disentangle as a practical matter.

Consider General Comment No. 17 of CESCR, which analyzes the authors' rights clause in Article 15(1)(c) of the ICESCR.¹⁴ The General Comment, while identifying the distinctive features of authors' rights, endorses the societal benefits of individual creativity and the need to balance incentives and access in language that should be familiar to IP lawyers and policymakers. According to the Committee, the central aim of authors' rights is 'to encourage the active contribution of creators to the arts and sciences and to the progress of society as a whole,' a goal that states achieve by striking an 'adequate balance' between creators' rights and other rights protected in the ICESCR, including the rights to food, health, education, and to enjoy the benefits of scientific progress and its applications.¹⁵

A second example concerns the request for WTO consultations initiated in 2009 by India and Brazil against the European Union (EU) for multiple seizures of generic medicines in transit. The complaining states raised plausible arguments that the seizures violated the TRIPS Agreement and the General Agreement on Tariffs and Trade (GATT). But they bolstered these arguments with references to international human rights law – references that focused not on treaties but on a nonbinding resolution of the UN Commission on Human Rights and statements by the Special Rapporteur on the right to health.¹⁶ In 2011 the parties reached a settlement that restricted the EU's authority to intercept generic medicines in transit. The settlement, although criticized by some commentators, illustrates how arguments invoking non-binding human rights norms can contribute to the resolution of intellectual property disputes in other international venues.¹⁷

¹³ For additional discussion, see Laurence R. Helfer, *Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking*, 29 *Yale J. Int'l L.* 1, 26 (2004).

¹⁴ CESCR, General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of Which He or She is the Author, Art. 15(1)(c), UN Doc. E/C.12/GC.17 (12 January 2006) (General Comment No. 17).

¹⁵ *Ibid.*, paras 4, 35.

¹⁶ E.g., Intervention by India, Agenda Item 'M' – Other Business, Seizure of generic drug consignments at EC ports, available at: <<http://www.ip-watch.org/weblog/wp-content/uploads/2009/06/intervention-by-india-seizure-of-generic-drug-consignments-at-ec-ports.pdf>> (accessed 15 July 2013).

¹⁷ Brook K. Baker, Settlement of India/EU WTO Dispute re Seizures of In-Transit Medicines: Why the Proposed EU Border Regulation Isn't Good Enough, *PIJIP Research Paper*

If we now assume that engagement between the human rights and IP regimes is inevitable, a second question arises: what normative framework ought to guide that engagement? I consider three different answers to this question, which I illustrate with examples from the relationship between copyright and freedom of expression, and the relationship between pharmaceutical patents and the right to health.

One way to conceptualize the relationship between human rights and IP is to view the two regimes as fundamentally in conflict. Endorsements of this approach are common in the UN human rights system. A 2000 resolution of the Sub-Commission on the Promotion and Protection of Human Rights first asserted that ‘actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realization of economic, social and cultural rights.’¹⁸ These conflicts cut across a wide swath of legal terrain, including:

the enjoyment of the right to food of plant variety rights and the patenting of genetically modified organisms, ‘bio-piracy’ and the reduction of communities’ (especially indigenous communities’) control over their own genetic and natural resources and cultural values, and restrictions on access to patented pharmaceuticals and the implications for the enjoyment of the right to health.¹⁹

To resolve these conflicts, the Sub-Commission, other UN bodies, and some commentators invoked ‘the primacy of human rights obligations’ over economic policies, laws and treaties such as TRIPS.²⁰ For its proponents, this resolution flows from the fact that human rights are fundamental and by definition of higher importance than private economic rights.²¹

Two examples illustrate the practical implications of the human rights primacy argument. The most well-known example concerns the patenting of the antiretroviral drugs that have transformed the lives of those living with HIV/AIDS. In the mid 1990s, the pharmaceutical companies that invented these drugs charged very high prices that only the wealthiest individuals could afford. With the lives of tens of millions at stake, public health NGOs and developing country governments orchestrated a backlash against the drug companies and the states that backed them in public advocacy

Series No. 1-1-2012, available at: <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1026&context=research>> (accessed 15 July 2013).

¹⁸ ESOSOC, Sub-Commission on the Promotion and Protection of Human Rights, Intellectual Property Rights and Human Rights, Res. 2000/7, UN Doc. E/CN.4/Sub.2/RES/2000/7 (17 August 2000), preamble, para. 11.

¹⁹ *Ibid.*

²⁰ *Ibid.*, para. 3.

²¹ E.g., Richard Elliott, ‘TRIPS and Rights: International Human Rights Law, Access to Medicines, and the Interpretation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights’ (Canadian HIV/AIDS Legal Network & AIDS Law Project, South Africa, 2001) (arguing that human rights have primacy under the UN Charter); Robert Howse and Makau Mutua, ‘Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization’, in Hugo Stokke and Anne Tostensen (eds), *Human Rights in Development: Yearbook 1999/2000* 51 (2001, Kluwer Law International) (‘Human rights, to the extent they are obligations *erga omnes*, or have the status of custom, or of general principles, will normally prevail over specific, conflicting provisions of treaties such as trade agreements.’).

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campaigns, national courts litigation, and international negotiating forums. The backlash invoked the primacy of human rights in general – and the rights to life and health in particular – as a legal argument, a political mobilization tool, and a rhetorical strategy. The combined pressure of these approaches, together with fears that governments would abrogate pharmaceutical patents, resulted in a rapid reduction in the price of antiretroviral medicines and treatments for other endemic diseases.²²

The human rights primacy argument has also featured in litigation involving national copyright laws. In two US Supreme Court cases, the plaintiffs argued that the right to freedom of expression prevented the US Congress from extending the term of protection for copyrighted works already in existence and from restoring copyright protection to works that had previously entered the public domain due to a failure to adhere to US formalities. The Court rejected the argument in both cases.²³ In Europe, by contrast, a number of national courts²⁴ have concluded that freedom of expression can be invoked as a ‘corrective when [intellectual property] rights are used excessively and contrary to their functions.’²⁵

An assessment of the conflicts-human rights primacy approach reveals advantages and disadvantages. The approach’s value lies principally in its ability to reframe public demands for access as internationally recognized entitlements equivalent to those of IP owners. This linguistic shift is not simply a rhetorical move; it also helps to reshape legal norms and negotiating strategies. From a normative perspective, such a reframing channels IP reform advocates to work in international human rights forums to clarify ambiguous treaty texts and evaluate the human rights consequences of IP laws and policies. From a negotiating perspective, a conflicts approach invokes international legal norms whose provenance and legitimacy are well established. By relying upon these norms to bolster their arguments for reform, advocates can more credibly claim that a rebalancing of IP protection is necessary to harmonize two parallel regimes of internationally recognized rights.

A major disadvantage of the conflicts approach is that it fails to consider the dynamic nature of innovation and creativity. If a patented invention or copyrighted work with high societal value already exists, the human rights primacy argument justifies making that invention or work widely available at the lowest possible cost. But such a response, if taken to an extreme, would sharply reduce the incentives to, for example, find a treatment for the next disease or to discover the next advance in communications software.

A second way to conceptualize the relationship of human rights and IP is to view both fields as asking the same fundamental question – how to give authors and

²² E.g., Lisa Forman, “‘Rights’ and Wrongs: What Utility for the Right to Health in Reforming Trade Rules on Medicines?”, 10 *Health & Hum. Rts.* 37 (2008).

²³ *Golan v. Holder*, 132 S. Ct. 873 (2012); *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

²⁴ For further discussion with references to relevant case law, see Reto M. Hilty and Sylvie Nérissou, (eds), *Balancing Copyright: A Survey of National Approaches* (2012, Springer); Séverine Dusollier, ‘Pruning the European Intellectual Property Tree: In Search of Common Principles and Roots’, in Christophe Geiger (ed.), *Constructing European Intellectual Property: Achievements and New Perspectives* 24 (2013, Edward Elgar Publishing).

²⁵ Christophe Geiger, ‘Fundamental Rights, a Safeguard for the Coherence of Intellectual Property Law?’, 35 *Int’l Rev. Intell. Prop. & Competition L.* 268, 278 (2004).

inventors sufficient incentives to create and innovate while providing the public with adequate access to the fruits of their intellectual efforts. This approach sees the two regimes as coexisting in the same policy space, but as sometimes in tension over how to strike the balance between incentives on the one hand and access on the other.

The coexistence approach is found in many UN human rights documents, including Article 27 of the Universal Declaration and General Comment No. 17. These documents differ from some conceptions of IP in that they give greater weight to human rights and other societal goals. As CESCR has explained, in striking an ‘adequate balance’ between creators’ rights and human rights, ‘the private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration.’²⁶

At the level of policy, the coexistence approach gives greater weight to flexibility mechanisms in IP law, such as subject matter exclusions, exceptions, limitations, compulsory licenses, and differential treatment of developing nations. According to proponents of this approach, governments have made insufficient use of these policy tools or have restricted them in response to lobbying by IP industries or pressure from other states. Once these flexibility mechanisms have been revived and expanded, the argument continues, the IP regime can better achieve the goals that it shares with the international human rights regime.

As applied to patented medicines, the coexistence approach favors giving developing countries greater discretion to issue compulsory licenses to produce low-cost generic drugs while paying reasonable royalties to drug manufacturers. The approach also lauds the Doha Declaration on TRIPS and Public Health, which identified and later remedied a structural flaw in the TRIPS Agreement for developing nations that lack sufficient domestic capacity to produce generic drugs.²⁷ In the area of copyright, the coexistence approach finds expression in national court rulings that interpret ambiguities in domestic law to preserve the balance between access and incentives, and in the detailed exceptions and limitations in the new WIPO treaty to facilitate access to published works for visually impaired persons.

These examples highlight an attractive feature of the coexistence approach – expanding the regulatory space available to governments via the increased use of IP flexibility mechanisms. But there are risks to the approach as well, most notably the creation of human rights-inspired external limits on intellectual property – sometimes referred to as maximum standards or ceilings²⁸ – that may be less amenable to the incremental recalibration in response to changes in law, politics, technology, and social values. More importantly, existing IP flexibility mechanisms were not designed with human rights in mind. They thus provide only limited guidance to governments and

²⁶ General Comment No. 17, *supra* note 14, para. 35.

²⁷ For further discussion, see Cynthia Ho, *Access to Medicine in the Global Economy: International Agreements on Patents and Related Rights* (2011, Oxford University Press).

²⁸ E.g., Henning Grosse Ruse-Khan, ‘Time for a Paradigm Shift? Exploring Maximum Standards in International Intellectual Property Protection’, 1 *J. Trade L. & Devel.* 56 (2009); Annette Kur and Henning Grosse Ruse-Khan, *Enough Is Enough – the Notion of Binding Ceilings in International Intellectual Property Law in Intellectual Property Rights in a Fair World Trade System* 359 (2011, Edward Elgar Publishing).

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civil society groups interested in restructuring innovation and creativity policies in ways that affirmatively promote human rights.

A third framework for constructing the engagement between the two legal regimes conceives of IP as one – but only one – modality available to enhance human rights. For economic and social rights, operationalizing this framework involves two steps – specifying the minimum entitlements relating to health, food, education, and so forth that international human rights law requires, and then identifying the range of legal and policy mechanisms available to achieve those outcomes. Intellectual property plays only a supporting role in this framework. Where it helps to achieve outcomes that human rights law requires or urges, governments should embrace it. Where it hinders those outcomes, states should modify or restrict its scope. In either case, the focus remains on the minimum levels of human well-being that states must make available to the individuals subject to their jurisdiction.

Intellectual property laws help governments to satisfy these minimum entitlements when IP-protected goods are sold or licensed to consumers. But the monopoly power that accompanies IP protection enables the owners of those goods to maximize profits by offering the goods at supra-competitive prices. The result is that individuals with greater financial means can afford such goods while those with fewer economic resources cannot. Intellectual property industries respond to these market signals by developing new products to satisfy the demands of well-off consumers. In the case of patented medicines, for example, pharmaceutical companies focus their research and development on finding new drugs for ailments common in wealthy industrialized nations rather than diseases that afflict the world's poor.

Governments are not powerless to change this state of affairs. To the contrary, they can restructure incentives for innovation and creativity in ways that further human rights objectives. Strategies to promote research on neglected diseases – such as prizes, public-private partnerships, and orphan drug schemes – provide a paradigmatic example.²⁹ These strategies work with the existing IP system rather than against it, redirecting incentives and channeling market forces toward socially desirable goals.

Proposals to revise innovation incentives are furthest advanced for medical research and the right to health.³⁰ Governments, NGOs, and international organizations can develop similar proposals for other intersections between economic and social rights and IP, such as the right to food and plant variety protection, and the right to education

²⁹ E.g., Report of the WHO Consultative Expert Working Group, Research and development to meet health needs in developing countries: Strengthening global financing and coordination (2012); Peter Hotez et al., 'Strengthening Mechanisms to Prioritize, Coordinate, Finance, and Execute R&D to Meet Health Needs in Developing Countries', Discussion Paper, Institute of Medicine (2013), available at: <<http://www.iom.edu/Global/Perspectives/2013/~media/Files/Perspectives-Files/2013/Discussion-Papers/BGH-GlobalHealthRD.pdf>> (accessed 15 July 2013).

³⁰ Unfortunately, the member states of the World Health Organization (WHO) recently put off a proposal for a new treaty on medical research and development that would have provided a comprehensive framework to encourage research on neglected diseases and improve access to medicines. Rachel Kiddell-Monroe, Johanne Helene Iversen and Unni Gopinathan, 'Medical R&D Convention Derailed: Implications for the Global Health System', *Journal of Health Diplomacy* (12 June 2013), available at: <<http://www.ghd-net.org/journal-of-health-diplomacy/online-first>> (accessed 15 July 2013).

and copyrighted instructional materials. Human rights impact assessments can help to evaluate whether a particular proposal is likely to help or hinder the realization of these rights.³¹

In the area of civil and political rights, attention has focused on recent efforts by governments and industry groups to expand the enforcement of IP rights. Treaties such as the Anti-Counterfeiting Trade Agreement (ACTA)³² and domestic legislation imposing harsh criminal penalties and civil sanctions – including disconnecting users from the internet after three warnings of IP infringement – have engendered trenchant criticisms from a range of stakeholders.³³ Judicial challenges and political mobilizations against these treaties and national laws – many of them successful – have identified violations of privacy, freedom of expression, fair trial, and other procedural rights.³⁴ These efforts to expand IP enforcement have also acted as a catalyst in the human rights regime. They have led activists, scholars, and international law experts to consider how established civil and political liberties apply in new contexts, such as online communications, social media, and the mining of personal data by governments and private actors.³⁵

This chapter provides a brief introduction to the fascinating and challenging issues of law and policy that arise at the interface of human rights and intellectual property. The remaining chapters in this volume, authored by a distinguished group of scholars, officials, and practitioners, address specific aspects of this interface using a range of perspectives and analytical approaches. Taken together, these contributions reveal the richness and diversity of a growing literature that analyzes the relationship between the two legal regimes.

³¹ E.g., James Harrison and Alessa Goller, 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?', 8 *Hum. Rts. L. Rev.* 587 (2008); 'Human rights impact assessment for trade and investment agreements'. Report of the Expert Seminar, Geneva, Switzerland (23-24 June 2010), available at: <http://www2.ohchr.org/english/issues/food/docs/report_hria-seminar_2010.pdf> (accessed 15 July 2013).

³² E.g., Michael Blakeney, 'Intellectual Property Enforcement: A Commentary on the Anti-Counterfeiting Trade Agreement' (ACTA) (2012).

³³ E.g., Douwe Korff and Ian Brown, 'Opinion on the Compatibility of ACTA with the ECHR and EU Charter of Fundamental Rights' (31 August 2011), available at: <<http://rfc.action-acta.eu/fundamental-rights>> (accessed 15 July 2013).

³⁴ E.g., Jonathan Griffiths, 'Criminal Liability for Intellectual Property Infringement in Europe – The Role of Fundamental Rights', in Christophe Geiger (ed.), *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research* 191 (2012, Edward Elgar Publishing); Alberto J. Cerda Silva, 'Enforcing Intellectual Property Rights by Diminishing Privacy: How the Anti-Counterfeiting Trade Agreement Jeopardizes the Right to Privacy', 26 *Am. U. Int'l L. Rev.* 601 (2011).

³⁵ E.g., Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (16 May 2011) (prepared by Frank La Rue).