

## **The relationship between intellectual property and human right and a policy oriented recommendations**

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### **Abstract**

The objective of this review is to analyze possible interrelation and conflicts between intellectual property law and human right, with particular attention to the right of health, as well as their impact on social acceptability and effectiveness of the legal norms. Intellectual property protection has been debated for long time because of its impact on the society and the environment. It is important to take into consideration when nation do not adopt the legislation as it makes a back step historically in the protection of human due to the fact that the importance of human rights is established by it's implementation. We will examine different legal mechanism that are used and can be used in order to balance the interest involved, focusing on human rights norms recognized by national and international law. We aim to analyze the different aspects of the relationship between human rights and Intellectual property with a special focus on the right of health. Intellectual property protection, have implication on the right to health and related human rights in a different ways. Intellectual property protection can affect medical research and the access to medicines. We will see how medicines are of decisive importance for the preservation and maintenance of the health of citizens, especially in developing countries which justifies the special attention that governments give to their regulation. A balance must be sought between these international rights and access to medicines by patients in developing countries at affordable prices. Companies need to use patents not only as incentives and mechanisms of innovation, but as strategic assets for the generation and conservation of dominant positions. We will set policy-oriented recommendations with the aim to enhance social acceptability and legitimacy of intellectual property law and guidelines on development of intellectual property norms.

**Keywords:** Human right, Intellectual Property, Health Right, Right to Life, Patents

## **I. Background of the Research Proposal, Objectives and Main Research Area**

Intellectual property and human rights are two different strands that have long been treated and developed independently. Their relationship has been at the center of several national and international debates and examination over the last few years becoming a central issue of theoretical and empirical research and interpretation, and over time have been strongly integrated into the curricula of law and social science universities. These debates tried to identify the limits of the political space and to define the appropriate relationship between them.

The field of Human rights have recently attracted a great deal of interest. The common understanding of these rights in the constitutional theory is considered a part of a very active movement and its treatment in the international arena is structured and at the same time complex and dynamic. The fact that the human being is the central subject of human rights differentiates human right from legal rights recognized in intellectual property systems.

Intellectual property (IP) protection has been constantly debated because of its impact on the society and the environment. The number of patent is frequently used as a measures for a county's economic growth and inventiveness. However if the purpose of IP right is to incite innovation and creativity, an integrated approach between IP and human right is essential. The human-rights approach need to ask all governments to protect their citizens from the negative effects of intellectual property by analyzing the likely impact of specific innovations, and to utilize these data to guarantee human rights. A human rights approach seeks to draw attention to the way in which the international community relates to press global challenges. For science and technology, the approach requires scientists to go further by knowing how their work relates to human rights, and ask them strive to ensure and affirm these rights through the knowledge they produce. Thus a human right approach to IP is also crucial in order to ensure users to be treated in the same way as owners and producers which are normally regarded as are the only "rights" holders<sup>1</sup>.

The importance of intellectual property rights is seen as an issue closely tied to the conflicts associated with technological development and, more generally, to the value acquired by knowledge in what some have called the "information society" (Castells, 1997). In a context where the technological capacity to broadcast and information disclosure makes it possible for artistic and intellectual creations, for technological and scientific innovations and everything that is considerate as "knowledge" and "information" to reach different spaces beyond those that gave rise to them. The problem associated with the application and effectiveness of the intellectual property rights, are particularly relevant, both in terms of the protection of individuals and the protection of collective rights (Berger 1999). In addition to the

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<sup>1</sup> Helfer, L. R. (2003). Human rights and intellectual property: Conflict or coexistence. *Minn. Intell. Prop. Rev.*, 5, i.

fact that the technological changes have the ability to quantify and qualitatively change the value of knowledge and information which they can also unmask the limitations and anachronisms of the current intellectual property regime in order to respond to the challenges posed by the new digital environment. This is due, from one part to the fact that its meaning and capacity for harm largely exceeds those of the analogue environment (which requires to rethink laws concerning intellectual property rights according to the new context) but also the challenges associated with new economic and political developments which cast doubt the current legal system and face new ethical challenges.

For instance, the new transformation based on a segmented production able to challenge a wide variety of consumers and responding to local demands and tastes concur in what we call as the economy of culture which imply important consequences. Indeed, cultures considered as “social totalities” become products and source of tradable goods in the market.

In this sense, the growing importance of intellectual property rights is not coincidental. It unfolds in an international arena where the constant call for human rights constitutes the platform for its growing politicization, from which diverse minorities and ethnic groups begin to see themselves and to be seen as new social and political actors.

Based on these argumentation, our thesis argues that the consecration of resources, goods and knowledge in terms of “intellectual property rights” is closely related to other aspects such as human rights.

**Objectives:** The overall objective of the proposal is to assess the intersection and potential dispute between intellectual property and human right and understand its implication in Europe exploring alternative frameworks for conceptualizing their relationship. Thus, find new type of useful an legal and politics mechanisms to ensure the respect of human rights in the case of expansion of intellectual property in areas including freedom of expression, public health, education, privacy, life and etc.

To reach the overall objective, the project will focus at two different levels (specific research question):

1. What are the implications of intellectual property and innovation in the human right for example the right of health in the national and international level?
2. What type of legal and politics mechanisms are necessary in order to implement human rights effectively if we assume that the two field are closely interconnected.

## **II. Methodology and Time Plan**

This research will use state-of-the-art knowledge to develop an innovative approach in the research of strategies to preserve human rights and to open and find type of legal and politics mechanisms in order to effectively implement human rights. It would be necessary to study international and national constitutions in order to understand how those constitution protect these two rights in different countries with the aim to find a solution to increase international obligations through various arrangements. Although States are responsible for ensuring the protection of human rights, there are many other players that should be involved in the development of new rules. Thus we will try to outline those actors and possible measure that could help reach the objectives. It offers new perspective in order to analyze the difficult relationship of human rights and intellectual property in legal practice and academic research.

## **III. Description of the Proposed Research**

Intellectual property (IP) and human rights are two different fields which have been subject of separate discussion and debates for long time. Their relationship require to be reviewed carefully in order to understand the effect of intellectual property rights on the implementation of human rights and understand how to address new challenges concerning contributions to knowledge and innovation.

This article examines the different aspects of the relationship between these two fields and the impacts of existing intellectual property rights system on the realization of human rights with a special focus on the right of health. The debates about the IP and human rights tried to identify the limits of the political space and to define the relationship between them. Since the introduction of the World Trade Organization (“WTO”) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”), national and international organizations, courts, and researchers have more attention on the intersections of human rights and intellectual property rights. Back in time, the intersection between IP and human right can be seen from the 1948 Universal Declaration of Human Rights, (UDHR) which states 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”.<sup>2</sup>

The statement proposes that the promotion of innovation and the diffusion on science and technology have to take into account the human rights. Precisely in the

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<sup>2</sup> On the conflict of intellectual property and the right to health, see D. Matthews, ‘Right to health and patents’, forthcoming in: C. Geiger (ed.), *Research Handbook on Human Rights and Intellectual Property* (Cheltenham, UK/ Northampton, MA, Edward Elgar, 2014).

innovation sphere we can find Intellectual property which refers to the area of law responsible for the legal protection granted to all intellectual creation of the human mind, such as inventions, creative literary, scientific or artistic labor, distinctive signs and images used for business purposes<sup>3</sup>. Whereas human rights as a part of the human being represent the basic right that individuals have, by the mere fact that they are human beings and as such they possess unique attributes, that makes them a unique. The field of human rights have recently attracted a great deal of interest becoming a central issue of theoretical and empirical research and interpretation, and over time have been strongly integrated into the curricula of law Universities. The common understanding of these rights in the constitutional theory is considered a part of a very active movement and its treatment in the international arena is structured and at the same time complex and dynamic. It is worth stressing that the term human right goes beyond merely recognizing civil and political right. The term is immersed in the international framework through the establishment of international treaties, which have conferred legal form on human rights and developed the body of international human rights. The fact that the human being is the central subject of human rights differentiates human right from legal rights recognized in intellectual property systems<sup>4</sup>.

IP has become very popular over the years being the subject of a number of international and national laws. This growing interest comes from the fact that in the modern economy the potential benefits of scientific research and technological innovation are protected by the intellectual property. Intellectual property would therefore be a powerful stimulus to scientific and technological growth<sup>5</sup> in that it allow inventors to develop and exploit new knowledge and ideas. Therefore, through the introduction of their new products, information, and creative activities provide the benefit for the society. Within this framework, a society where knowledge and information are fundamental sources of progress, decide to reward authors giving them the IP rights.

The recognition of IP rights enables authors make their inventions available to the market under monopoly conditions, for a given period and foster creativity. In this way they can achieve economic advantages which able to compensate sustained efforts in innovation. Benefits arising from the attribution of intellectual property rights may have an influence on economic players' R&D investment<sup>6</sup>.

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<sup>3</sup> Dratler, J., & McJohn, S. M. (1991). *Intellectual Property Law: Commercial, Creative, and Industrial Property* (Vol. 1). Law Journal Press.

<sup>4</sup> Corao, C. M. A. (2003). *La jerarquía constitucional de los tratados relativos a derechos humanos y sus consecuencias*. Fundación Universitaria de Derecho, Administración y Política.

<sup>5</sup> Williams, H. L. (2013). Intellectual property rights and innovation: Evidence from the human genome. *Journal of Political Economy*, 121(1), 1-27.

<sup>6</sup> Dinwoodie, G. B. (Ed.). (2013). *Methods and Perspectives in Intellectual Property*. Edward Elgar Publishing.

The recognition of this right is not without its associated duties, taking into account the social implications that entails. State legislature. In this context, consideration should be given by legislatures on the impact that scientific advances and thus IP are likely to have into the society. Accordingly, legislations around the world need to take ethical issues and fundamental principles such as the respect for human rights into consideration. In this contexts, scholars highlight the fact that IP should have a social function and that its right must be exercised for the well-being of the society<sup>7</sup>.

The intersection between these two fields is undoubtedly relevant,<sup>8</sup> however little attention has been given to the implications of the intellectual property on some rights, namely with regard to IP protection and the negative consequences on human rights. More specifically, with regards to patent protection and the right to life or even health. For example, intellectual property protection can have implication on the right to health and related human rights in a different ways. Intellectual property protection can affect medical research and the access to medicines.

Medicines are of decisive importance for the preservation and maintenance of the health of citizens, which justifies the special attention that governments give to their regulation. This regulation covers aspects as diverse as manufacturing and marketing conditions in order to ensure efficiency and safety, prices, and coverage by public health services. Access to medicines is an old concern that affects both developed and developing countries, with the aim of ensuring that citizens can dispose of products with a high standard of safety and security that are necessary for the maintenance and improvement of their health. Regardless of their peculiarities, medicinal products are nonetheless commodities which must therefore be produced and are susceptible to commercial traffic both within the frontier boundaries of States and economic integration organizations and outside in the international level . Like any other merchandise, medicines are produced and marketed by industries that pursue the economic profitability of their business.

#### **IV. The Right to Health**

The Constitution of the World Health Organization (WHO) of 1946 recognized "enjoyment of the highest attainable standard of health". The right to health is a human right recognized by international human rights treaties. Despite the right to health is recognized in international human rights treaties, it has different definition. We can find different developments in international law regards to the definition of the right to health, which includes both health care and healthy conditions<sup>9</sup>. These

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<sup>7</sup> Geiger, C. (2013). The social function of intellectual property rights, or how ethics can influence the shape and use of IP law.

<sup>8</sup> Raustiala, K. (2006). Density and conflict in international intellectual property law. *UC Davis L. Rev.*, 40, 1021.

<sup>9</sup> Yamin, A. E. (2005). The right to health under international law and its relevance to the United

norms provide a framework that change the analysis of issues such as the disparities in treatment. The right to health is a term included in the international human rights. It implies that government or international organizations should ensure one's good health<sup>10</sup>. According to the Universal Declaration of Human Rights, which is considered by the UN General Assembly as a common standard for all humanity, the right to health include the right to a “standard of living adequate for the health and well-being of himself and his family, including . . . medical care and . . . the right to security in the event of . . . sickness, disability . . . or other lack of livelihood in circumstances beyond his control”. The fulfillment of the right to health include providing humans with voting right if there is a need to decide about their well-being. The lack of protection of the health implies economic and social problems<sup>11</sup>. The context of human rights could avoid that all the decision which have to do with health be matters of political discretion.

There is the right, protected by the ICESCR<sup>12</sup> to enjoy the highest attainable standard of physical and mental health which include the obligations of states to ensure, in particular for vulnerable or marginalized groups the right of access to health facilities. In the case of primary health care, this right cover the provision of essential drugs<sup>13</sup>, for example in the case of HIV/AIDS. The UN Human Rights Commission indicate that access to medication is an essential element for achieving the full realization of the right to health<sup>14</sup>. The possibility to get access to medicines and their affordability are two central components of the right to health. They can enhance the access through incentives for the development of new drugs and also restrict access because of the comparatively higher prices of patented drugs<sup>15</sup>. Furthermore, patent protection helps to promote medical research by availing the pharmaceutical industry to cover the costs of testing and developing new drugs. However, economic reasons of IP rights foster researches in more beneficial disease instead of concentrate also in disease affecting people in developing countries. Thus in those countries IP right is not interested investing in relation to neglected

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States. *American Journal of Public Health*, 95(7), 1156-1161.

<sup>10</sup> Leary, V. A. (1994). The right to health in international human rights law. *Health and human rights*, 24-56.

<sup>11</sup> Marks S. The new partnership of health and human rights. *Hum Rights Dialogue*. 2001; 2 : 21 – 22. Available at: <http://www.cceia.org/viewMedia.php/prmTemplateID/8/prmID/650>. Accessed March 13, 2005.

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976.

<sup>13</sup> Gimigliano, F., & Negrini, S. (2017). The World Health Organization “Rehabilitation 2030—a call for action”. *European Journal of Physical and Rehabilitation Medicine*.

<sup>14</sup> Cullet, P. (2007). Human rights and intellectual property protection in the TRIPS era. *Human Rights Quarterly*, 29(2), 403-430.

<sup>15</sup> Joint United Nations Programme on HIV/AIDS., & UNICEF. (2010). *Children and AIDS: Fifth Stocktaking Report, 2010*. UNICEF.

diseases<sup>16</sup>. Furthermore, the holders of pharmaceutical patents are able to impose drugs' price above the production cost making them unattainable for many people who need them<sup>17</sup>.

In recent years, one of the most controversial discussion has focused on the impacts of medical patents on the realization of the human right to health in some countries, especially<sup>18</sup> the developing ones.

Although there is no international agreement or international declaration recognizing the right of everyone to access essential drugs, it can be understood that this right is inferred from the right to life and the right to health<sup>19</sup>, constituting an essential aspect of both rights. The right to life is laid down in the Universal Declaration of Human Rights (1948) and recognized in most political constitutions. In addition, Article 25.1 of the declaration states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. The right to medical and social services includes not only health facilities and services, but also access to medicines, as a fundamental component for the full exercise of the right to health."

For this reason, different international forums have given rise to agreements committing states to promote the conditions for the access to health services, including access to medicines<sup>20</sup>. Taking the right to health as a point of reference, it should be noted that the latter is expressly recognized in the preamble of the WHO which expressly affirms the right to the highest attainable standard of health. Of particular interest is the Art.12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), an agreement concluded in 1966, whose script is very close to the explicit recognition of the right of everyone to access medicines. Thus, Art.12.1 of the Covenant states that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". And article 12.2 states "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right

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<sup>16</sup> Nwobike, J. C. (2006). Pharmaceutical corporations and access to drugs in developing countries: the way forward. *Sur. Revista Internacional de Derechos Humanos*, 3(4), 126-143.

<sup>17</sup> Millum, J. (2008). Are pharmaceutical patents protected by human rights?. *Journal of medical ethics*, 34(11), e25-e25.

<sup>18</sup> E.g., James Thuo Gathii, Rights, Patents, Markets and the Global AIDS Pandemic, 14F IA.J.I nt ' ll. 261 (2002)

<sup>19</sup> Hogerzeil, H. V. (2006). Essential medicines and human rights: what can they learn from each other?. *Bulletin of the World Health Organization*, 84(5), 371-375.

<sup>20</sup> United Nations Human Rights Commission adopted a resolution (April 2001) which recognizes the treatment for people living with HIV / AIDS as essential for the full exercise of the right to the highest standard of health.



shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases". States parties will take the necessary steps to "The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

The territorial scope of application and, therefore, the global obligation of this agreement is very broad. The exegesis of article 12 of the ICESCR makes it possible to recognize any person to access to medicines, as well as the fact that responsibility for the implementation of the right lies with each country. Accordingly, affected States should allocate the necessary public resources available in order to ensure and provide essential drugs. It should also be understood that States will refrain from adopting international standards that directly or indirectly interfere with the exercise of this right or that limit the possibilities of effective exercise of this right. In particular, States should refrain from adopting international agreements on intellectual property. This is due to the fact that it can enable to confer unnecessary benefits to the holders of intellectual property rights and would make it impossible for citizens to obtain patents protecting their innovations. The right of access to medicines has a positive legal content in the sense that its effective exercise would require the positive action of the international community (article 12.2.d)<sup>21</sup>. Thus, since what is being protected is health and, therefore, the life of people, states should carry out the necessary acts to ensure free medication when are essential for all person who lacks the resources to acquire them. In this regard, in the Charter of the United nations signatory of the United Nations (Article 55)<sup>22</sup>, all countries are committed to promote higher standards of living and solutions to international problems related to health. A company which has developed a medicinal product capable of saving the life of a person, has a responsibility under human rights to take all reasonable steps to make medicine as accessible as possible, as soon as possible, for each one that would need it<sup>23</sup>. In the present stage of development of international law, it is difficult for pharmaceutical companies to have a legal obligation to ensure the fulfillment of the human right to medicines. In this regard, and among other considerations, it should be borne in mind that the international patent system has been created by all States of the international community. Hence, States, as declared also by the Paris Convention for the Protection of Industrial Property (1883) should

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<sup>21</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>

<sup>22</sup> United Nations, Charter of the United Nations, art 55, 24 October 1945 available on <http://www.un.org/en/charter-united-nations/>

<sup>23</sup> Higgins, R. (1995). *Problems and process: international law and how we use it*. Oxford University Press.

require companies not to abuse their patent if they do not want the invalidity of their patent.

Looking back historically, until 1995, each country had the possibility to design its own patent, seeking the balance between the impulse of innovation and the enhancement of the availability of the drugs for its population. Many developing countries signed up for this freedom with the exception of patent medicines or only limited patent protection. Furthermore, some rich countries choose to wait for local pharmaceutical industries to emerge before applying a patent regime in their own markets, and thus did not protect patent during the early stages of their development. In 1995, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was created which requires WTO member countries to protect patents for at least 20 years from the date of submission of all new technologies, including pharmaceuticals. The TRIPS Agreement is a substantial change for many poor countries. The article 8 of this agreement states as follow:

*1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.*

*2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.*

However, the protection provided are considered in some way ambiguous and difficult to apply. This is the case of parallel imports which are limited to patents, so pharmaceutical multinationals can seek to establish uniform prices on a world scale at the highest possible level. Therefore, parallel imports' usefulness is minimal for developing countries, unless extended to equivalent generic products. Compulsory licenses can only be granted if the receiver has made an effort to obtain a permit from the owner of the patent and has received an adequate compensation.

In developing countries, millions of people lack access to adequate health care, including the lack of availability of high-quality drugs. The dramatic spread of the AIDS pandemic, which particularly affects diverse populations in sub-Saharan Africa, Asia and Latin America, highlights the significant inequality in health and quality of life among the rich and the poor countries. Although countries with well-established market economies have treatments for HIV / AIDS patients, the disease is often a death sentence for patients in less developed countries<sup>24</sup>. The

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<sup>24</sup> Juma Calestous (1999) Intellectual Property Rights and Globalization: Implications for Developing Countries. Technology and Innovation Discussion Paper No.4, Center for International

pharmaceutical industry is painfully aware of this tragic disparity and is deeply concerned about the global threats posed by potentially deadly communicable diseases such as AIDS, malaria and tuberculosis.

The lack of access to health care in poor and developing countries is fundamentally a question of poverty and development that must be tackled like any other global problem. For instance, it can be recalled that that the proportion of patented drugs is extremely low: only 10 of these 306 drugs are subject to patent in industrialized countries, and the proportion is even lower in developing countries. However, patients in these countries do not receive these out-of-patent drugs as needed. From a global perspective, the main barriers to access to health care in the developing world range from financial barriers which include the insufficient public and private funding to mere barriers such as transports, facilities, sanitary equipment, distribution channels, water supply and etc. In addition, foreign investment has been discouraged by a number of aspects such as wrong political priorities, dubious economic policy options (protectionism, poor intellectual property), political instability and corruption. In hard- to- reach areas, access to health care service is also hampered by basic social and educational obstacles.

In these circumstances, people living in those areas do not have easy access to those treatment when they face the need of complex treatments and regular doctor visits, periodic medical supervision, and combinations of products (treatment for HIV / AIDS). However, the pharmaceutical industry is contributing and committed to improving its efforts to respond to this critical challenge. It is often disregarded that all the drugs and vaccines currently used to combat the world's diseases, including tropical diseases, are originated by the pharmaceutical industries. Even those few products not discovered by the pharmaceutical industry are available because the pharmaceutical companies tested and developed them. Drugs developed by pharmaceutical Research and Development (R&D) have provided health benefits to developing countries. Thus, pharmaceutical companies have long been making significant contributions to public health efforts in many developing countries around the world.

However, in most cases, pharmaceuticals products have often been wrongly used, and pharmaceutical R&D on health issues specific to poor countries remain inappropriate and the treatment of diseases in developing countries is still facing challenges.

It thus follows clearly from this review that intellectual property and innovation should take into account certain fundamental ethical principles ensuring an equitable balance of interests within them. The study of this relationship remains a relatively unexplored field and the lack of settled normative framework for understanding the intersection between IP and Human rights have led to experts, judges, and scholars

all over the world to seek ways to solve these issues and analyze the interconnection between the two legal rules and whether human rights should serve as an instrument of amendment in those cases where intellectual property rights are used excessively and contrary to their functions<sup>25</sup>.

## V. Innovative Character of the Proposal

Over the last few years, important national and international development have set off the debate on the relationship between the human rights and the intellectual property, becoming a central theme which have been strongly integrated into the curricula of many universities. However, Intellectual property law has not made important contributions to the comprehension of the potential impacts that it can have on the implementation of human rights.

Indeed, despite the fact their relationship has been at the center of several debates, they have so far been confined to try to understand the limits of each right and to define the appropriate relationship between them.

This study is different from previous ones because it involves the warning to establish new treaties at national and international concern in a novel approach due to the fact that few efforts have been taken in order to balance intellectual property rights and the human rights. Human-rights law is still considered a “soft” law with the consequence that, its legal treaties are not strong enough to fully impose more flexible observance of patents.

## VI. Societal Relevance

One of the main purpose of patents is to promote innovation and the dissemination of information. Nobody would be encouraged to spend time and energy looking for innovation if without having an economic return. This rule is applied in the field of the pharmaceutical research. The cost of developing a new drug, from research and development (R&D) entails a long and costly procedure. Unfortunately public institution do not bear the cost of such issue and government allocate a very small part of their quotation to research .It would be useful that those research would be fully financed from institution in order to handle such disease. However Government have other priorities and interests.

There are different reason of why these results can be applied in other research areas.First\_of all an human rights need to protect human from the possible negative effects of intellectual property. A human rights approach should focus to the attention to the way in which the international community relates to pressing global challenges.

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<sup>25</sup> Helfer, L. R. (2008). Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European human rights regime. *European Journal of International Law*, 19(1), 125-159.

Intellectual property needs to be considered not as an absolute right, but a right with social limits, a right that can give way when required by the general interest.

A sustainable economic and social system where knowledge and information are fundamental sources of progress for countries and societies, requires the clarification of key ethical issues and fundamental principles such as the respect for human rights within the broader context of fundamental rights, promote fundamental freedoms, economic progress and social equity.

## **VII. Conclusion**

Pharmaceutical development is a high risk issue due to the uncertainty in returns, it is imperative to protect intellectual property in order to use the revenues from these products to support research into new and better products for diseases, including those that particularly affect the developing world. Without intellectual protection, the resources needed for this research would be greatly diminished, ruining the hopes of millions in the developing world looking to the industry to find new cures, vaccines and more effective treatments for the diseases that affect them. Therefore, patent rights are fundamental for the pharmaceutical sector and for our society, since they protect innovation. A balance must be sought between these international rights and access to medicines by patients in developing countries at affordable prices. Companies use patents not only as incentives and mechanisms of innovation, but as strategic assets for the generation and conservation of dominant positions. Patent licenses are only one component of the new knowledge markets. Technology markets and science market are joined and new players patented innovations derived from basic research and development that were previously not classified as patentable. At the same time, further markets are also generated, in which patents acquire the role of strategic asset, beyond the effective use of protected innovation in present or future tangible production. On the one hand, patents become a determining asset to redefine the strategic and hierarchical position of companies and increase their bargaining power. Patents become assets, easily tradable between companies, which allow for legal disputes and facilitate cross-licensing agreements.

In this context the right of health allows human beings to live in dignity, requires states not only to sign and ratify international human rights treaties, but also to develop public policies that will materialize the realization of this right. To that extent, states must ensure that their actions as members of international organizations take into account the right of everyone enjoy the highest attainable standard of physical and mental health and therefore international agreements must support the public health policy that promotes widespread access to medical technologies and drugs for prevention, healing or relief.

### **VIII. Recommendation**

The following recommendations outline what key players could do in order to allow the access to essential drugs and allow the respect of human rights.

It would be necessary to revise the international patent agreements. Developing countries must maintain the right to produce, market, import and export affordable medicines. For this reason, TRIPS Agreement that safeguard public health should be strengthened. Furthermore it would be necessary humanize pharmaceutical companies. Pharmaceutical companies must reduce the prices of essential drugs to make them fair and affordable for poor countries. Prices should be determined as part of an international and transparent system based on the country's ability to pay.

### References

- Berger, P. L. (Ed.). (1999). *The desecularization of the world: Resurgent religion and world politics*. Wm. B. Eerdmans Publishing.
- Castells, M. (2010). *End of millennium: The information age: Economy, society, and culture/* (Vol. 3). John Wiley & Sons.
- Corao, C. M. A. (2003). La jerarquía constitucional de los tratados relativos a derechos humanos y sus consecuencias. Fundación Universitaria de Derecho, Administración y Política.
- Cullet, P. (2007). *Human rights and intellectual property protection in the TRIPS era*. *Human Rights Quarterly*, 29(2), 403-430.
- Dinwoodie, G. B. (Ed.). (2013). *Methods and Perspectives in Intellectual Property*. Edward Elgar Publishing.
- Dratler, J., & McJohn, S. M. (1991). *Intellectual Property Law: Commercial, Creative, and Industrial Property (Vol. 1)*. Law Journal Press.
- Geiger, C. (2013). *The social function of intellectual property rights, or how ethics can influence the shape and use of IP law*.
- Gimigliano, F., & Negrini, S. (2017). *The World Health Organization “Rehabilitation 2030—a call for action”*. *European Journal of Physical and Rehabilitation Medicine*.
- Helfer, L. R. (2003). *Human rights and intellectual property: Conflict or coexistence*. *Minn. Intell. Prop. Rev.*, 5, i.
- Helfer, L. R. (2008). *Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European human rights regime*. *European Journal of International Law*, 19(1), 125-159.
- Higgins, R. (1995). *Problems and process: international law and how we use it*. Oxford University Press.

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Hogerzeil, H. V. (2006). *Essential medicines and human rights: what can they learn from each other?*. Bulletin of the World Health Organization, 84(5), 371-375.

James Thuo Gathii (2002) *Rights, Patents, Markets and the Global AIDS Pandemic*, 14F IA . J. I nt ' 11. 261

Joint United Nations Programme on HIV/AIDS., & UNICEF. (2010). *Children and AIDS: Fifth Stocktaking Report*. UNICEF.

Juma Calestous (1999) *Intellectual Property Rights and Globalization: Implications for Developing Countries. Technology and Innovation Discussion Paper No. 4*, Center for International Development at Harvard University, Cambridge, MA.

Leary, V. A. (1994). *The right to health in international human rights law*. Health and human rights, 24-56.

Marks, S. P. (2001). The new partnership of health and human rights. *Human Rights*, 2(6), 21-22.

Millum, J. (2008). *Are pharmaceutical patents protected by human rights?*. Journal of Medical Ethics, 34(11), e25-e25.

Nwobike, J. C. (2006). *Pharmaceutical corporations and access to drugs indeveloping countries: the way forward*. Sur. Revista Internacional de Direitos Humanos, 3(4), 126-143. On the conflict of intellectual property and the right to health, see D. Matthews, 'Right to health and patents', forthcoming in: C. Geiger (ed.), *Research Handbook on Human Rights and Intellectual Property* (Cheltenham, UK/ Northampton, MA, Edward Elgar, 2014).

Raustiala, K. (2006). *Density and conflict in international intellectual property law*. UC Davis L. Rev., 40, 1021.

Williams, H. L. (2013). *Intellectual property rights and innovation: Evidence from the human genome*. Journal of Political Economy, 121(1), 1-27.

Yamin, A. E. (2005). *The right to health under international law and its relevance to the United States*. American Journal of Public Health, 95(7), 1156-1161.