

LAURENCE R. HELFER & GRAEME W. AUSTIN, *HUMAN RIGHTS AND INTELLECTUAL PROPERTY: MAPPING THE GLOBAL INTERFACE*, CAMBRIDGE, CAMBRIDGE UNIVERSITY PRESS, 2011

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In the book entitled *Human Rights and Intellectual Property: Mapping the Global Interface*, authors Helfer and Austin explore the intersections between intellectual property and human rights law and policy.

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The authors theorize that the relationship between the disciplines of intellectual property and human rights law has not been adequately analyzed or even considered by academics and practitioners, and that this relationship is in need of new studies that proactively examine the analysis and development of international conventions, treaties and case law. The authors aim to provide substantive materials and original analytical content to help students, academics, and practitioners explore the engagement between both regimes in a productive and coherent fashion.

The authors put a lot of emphasis on the word “interface” that is also included in the title of the book. According to them, the term “denotes mechanisms for conjoining distinct or contrasting elements and systems [...]”. Human rights and intellectual property exhibit distinctive systemic characteristics.”¹

The book is divided into eight chapters. The first chapter introduces readers to international human rights as well as the intellectual property system. It presents substantive legal and policy-oriented framework while setting out the characteristics of domestic and international institutions related to the two disciplines. In this chapter, the authors provide a conceptual framework for the analysis of conflicting arguments of government officials, courts, civil society groups and academic scholars.

The second chapter deals with the right to health and patented pharmaceuticals. Throughout this chapter, the authors focus primarily on the example of access to medicines for the treatment of human immunodeficiency virus infection/acquired immunodeficiency syndrome (HIV/AIDS). The pandemic’s global effects, the fact that the antiretroviral drugs have transformed the illness from life

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¹ Laurence R. Helfer and Graeme W. Austin, *Human Rights and Intellectual Property: Mapping the Global Interface* (Cambridge: Cambridge University Press, 2011) at xiv [Helfer and Austin].

threatening to a treatable chronic condition, their patent protection under the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS)², as well as national laws from which new drugs are benefited, constitute the main reasons for which this topic is particularly emphasized. Helfer and Austin assess both the rationalization for and the right's critiques of the right for health, and then analyze legally-binding norms that safeguard the emerging right of access to medicines. The authors accomplish this by reviewing intellectual property protection norms and mechanisms. Lastly, this chapter considers alternative approaches adopted by government officials and courts to boost access to medicines.

Chapter three addresses human rights associated with certain types of creative activity. It is entitled "Creator's Rights as Human Rights and the Human Right of Property." The authors begin their analysis by considering that major international human rights mechanisms recognize that those who do creative work are beneficiaries of human rights. These people are protected by intellectual property rights in most cases. The authors here "explore whether it makes a difference to the relationship between human rights and intellectual property if creators' economic and moral productions are viewed as both human rights *and* as intellectual property rights".³ [Emphasis in original.] They start by reviewing the main texts and legal instruments relevant to copyright law. Then, they explore the potential implications of creators' human rights and domestic law reforms by considering three proposals that, in turn, are examined as case studies further on in the chapter. Finally, Helfer and Austin, through analysis of the *Protocol to the European Convention on Human Rights*⁴, propose possibilities for protecting creators' works through the human right to property.

Chapter four of the book examines the rights of freedom of expression and cultural participation, and the right to benefit from scientific progress. In this chapter, the authors consider the scope of philosophical rationales for the right to freedom of expression. Then, they review sources of this right in domestic, regional and international law. This chapter's analysis hones in on the ways in which the right to freedom of expression has been invoked in judicial decisions relating to intellectual property. The authors then explore the relationship between two differing perspectives related to the link between intellectual property and the freedom of expression; intellectual property as a vehicle to promote the freedom of expression on one hand, and the legal limits imposed by the right to freedom of expression on intellectual

² The TRIPS Agreement is an agreement administered by the World Trade Organization (WTO) and was negotiated during the Uruguay Round of the *General Agreement on Tariffs and Trade* (GATT) in 1994. TRIPS requires the WTO member states to provide strong protection for intellectual property rights and has been heavily criticized by non-governmental organizations (NGOs) and developing countries as a policy with long term negative effects. See *General Agreement on Tariffs and Trade*, 30 October 1947, 55 UNTS 187 (entered into force 1 January 1948). See *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 15 April 1994, 1869 UNTS 299 (entered into force 1 January 1995).

³ Helfer and Austin, *supra* note 1 at 172.

⁴ *Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, 213 UNTS 262, Eur TS 9 (entered into force 19 May 1954).

property rights on the other.

Chapter five explores the right to education and its possible tensions with learning materials' copyright protection. This chapter examines the specific content of the right to education as it is set forth in major international human rights mechanisms. Then, the authors turn to the correlation between access to learning materials as an integral part of the right to education and the existence of copyrights. Copyrights may affect the prices at which learning materials can be provided and this creates tensions with respect to free access to education.

Chapter six considers the human right to food in the context of intellectual property protections in plant genetic materials. The authors' survey concluded that intellectual property and the right to food can coexist in the same policy space. They also identify methods for redirecting national innovation policies in ways that enhance states' ability to respect, protect, and ensure the right to food by using a human rights-focused analysis of plant genetic resources and plant-related intellectual property rights. Lastly, the authors suggest different ways in which intellectual property protection might be reformed to achieve human rights ends.

"Chapter [seven] considers the claims that have emerged in the context of indigenous peoples' struggles for recognition of their rights in respect of traditional knowledge and other forms of cultural production."⁵ In this chapter, the authors review human rights mechanisms that established foundations for public international law protections for indigenous peoples. Then, they examine human rights protections that are relevant to indigenous intellectual property issues. Finally, they consider an array of potential legal vehicles for protecting indigenous peoples' intellectual property, drawing on recent analysis of the World Intellectual Property Organization.

In the final chapter, the authors offer a more comprehensive analysis of their own basis for conceptualizing the most constructive connections between human rights and intellectual property regimes. They begin by reiterating the certainty of the human rights and intellectual property interface. Then, they assess existing proposals to reconcile human rights and intellectual property, and finally build up on the ideas developed in previous chapters. They propose "a framework that identifies when human rights concerns favor revising existing intellectual protection rules or otherwise restructuring the incentives for human creativity and innovation".⁶

The book offers a unique and comprehensive analysis of the main issues found to be at the junction of the two major legal disciplines. Evidently, the authors have invested a lot of research, practical experience, and time in the preparation of the book. Original analysis is followed by excerpted materials such as judicial decisions and international treaties; opinions of other legal scholars and reports of government and intergovernmental agencies and non-governmental organizations appear to enrich the study.

⁵ Hefler and Austin, *supra* note 1 at xiv.

⁶ *Ibid* at 503-504.

Although not purely a textbook, *Human Rights and Intellectual Property: Mapping the Global Interface* provides great guidance and support to students and practitioners related to the legal frameworks that govern both disciplines. The section “Notes and Questions” that follows the analysis of each substantive topic makes it easier for the reader to understand and further develop a critical viewpoint of the concepts and issues in question. The authors’ meticulous selection of passages and excerpts from a number of sources points the reader to the concepts under examination, while allowing for critical thinking. To that end, the section entitled “Issues in Focus” helps legal practitioners grasp main ideas and notions in a speedy and efficient way. The writing is kept simple and is uncluttered by heavy technical references (although hard to avoid when writing about intellectual property), making it an ideal course companion for law students as well as an invaluable source of reference for practitioners. In this way, this work is undoubtedly a step forward, and an original contribution to both areas of human rights law and intellectual property.

If there is one criticism to be made, it is that the authors’ view of international human rights law, as well as that of intellectual property, is limited to the traditional western conception. There is no reference to the existence of a multiplicity of international laws, and more specifically to indigenous peoples’ perception of international law and intellectual property. Given the increasing interplay between indigenous communities and States or multinational corporations, it would be worth exploring principles such as that of free, prior and informed consent or that of proportionality.

Nonetheless, the authors’ enthusiasm for the subject matter adds a sense of optimism for those who aspire to specialize in a novel synthesis of these two legal disciplines, in that it reflects the evolution of the legal studies and culture. It is the opinion of the reviewer that the genesis of this book reflects the objective of the authors. It will lead to the expansion of the current network of scholars, practitioners, government officials, journalists, and activists who will in turn contribute to the study of the interface of these two legal fields.