

# INTELLECTUAL PROPERTY AND HUMAN RIGHTS: IS THE DISTINCTION CLEAR NOW?

## AN ASSESSMENT OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS' GENERAL COMMENT No. 17 (2005)

ON

“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 IS THE AUTHOR”

POLICY BRIEF 3

OCTOBER 2006

### Introduction

The relationship between intellectual property (IP) rights and human rights has been a controversial question for over half a century. It has reached new heights since the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) entered into force in 1995, and the more recent proliferation of increasingly strict IP rules at the bilateral, regional and multilateral levels. At the core of the debate is the effect of IP rules, especially patents and copyright, on the ability of States to comply with their obligations under international human rights law – such as the obligation to ensure access to affordable medicines,<sup>1</sup> access to adequate food,<sup>2</sup> and access to educational materials.<sup>3</sup>

Another dimension of this heated debate is whether IP rights are human rights. This question turns on the interpretation of the human right to “the protection of the

moral and material interests resulting from any scientific, literary or artistic production of which he is the author” enshrined in the Universal Declaration of Human Rights (UDHR, adopted in 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, adopted in 1966).<sup>4</sup> Since the beginning, this right has been interpreted by two opposing schools of thought.

On the one hand are those who argue that the protection of the moral and material interests of authors cannot be equated with IP protection, because IP rights are not fundamental and inalienable entitlements of the human person. On the other hand, others argue that IP rights are implicit in the right to the protection of moral and material interests of authors and the right to property in the UDHR. Even if IP rights could be recognized as a form of property right – although property rights are excluded from the ICESCR – this latter argument fails to

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Intellectual property experts at a WIPO side-event

point out that IP rights lack the fundamental characteristics of human rights as they are established by legislative acts, limited in time and can be bought, sold or revoked.<sup>5</sup>

Recently, discussions on a Development Agenda for the World Intellectual Property Organization (WIPO) have seen a resurgence of this debate. For example, in a proposal put forward by the “Group of Friends of Development”<sup>6</sup> it is argued that “under no circumstances can human rights – which are inalienable and universal – be subordinated to intellectual property protection,”<sup>7</sup> as otherwise States’ ability to comply with their development and human rights commitments would be compromised. This view is also supported by non-governmental organizations (NGOs) concerned about the effect of high IP standards on health, food, education, culture and access to knowledge.<sup>8</sup> In contrast, private-interest NGOs and think tanks have invoked the human right to the protection of moral and material interests of authors and property rights, in order to claim that IP rights are human rights, and request higher standards of IP protection.<sup>9</sup>

In view of the debates on the effect of IP protection on the enjoyment of human rights, the Committee on Economic, Social and Cultural Rights aimed to clarify the distinction between IP rights and human rights in its General Comment No.17 (2005) on 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 is the author.”<sup>10</sup> The General Comment is the outcome of a long process that began back in 2000 with a Committee on Economic, Social and Cultural Rights Day of General Discussion on article 15(1) (c) ICESCR,<sup>11</sup> followed on by a Statement on intellectual property and human rights in 2001,<sup>12</sup> and the elaboration of a General Comment between 2003 and 2005.<sup>13</sup> Throughout the General Comment drafting process human rights advocates and pro-development IP experts stressed the need for the text to clarify the IP – human rights distinction, whilst also addressing the adverse effect of IP rules on access to medicines, access to seeds, access to educational materials, sustainable development and traditional knowledge.<sup>14</sup>

The final text of the General Comment, adopted on 21 November 2005, tries to respond to some of these concerns, but fails to do so fully.

This Brief aims to understand the scope and implications of General Comment No. 17 (2005) for the relationship between IP and human rights. Part I outlines the origin and intentions of the drafters of the human rights articles that are the central to this controversy, notably article 27 UDHR and article 15 ICESCR. Part II explains how General Comment No. 17 (2005) has tried to clarify the distinction between IP and human rights without fully doing so, with grave consequences for those aiming to achieve an IP system that is consistent with development commitments and human rights.

## I. The origin and intention of the protection of moral and material interests of authors as a human right

### A. Article 27 of the Universal Declaration of Human Rights (UDHR) 1948

The text of article 27 UDHR is as follows:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The inclusion of the protection of the moral and material interests of authors into the UDHR was more controversial than the right to freely participate in cultural life, or to share in scientific advancement and its benefits. Its inclusion comes from the confluence of various events. Firstly, the drafting of article 27 of the UDHR in 1948 was contemporary to the drafting of the American Declaration of the Rights and Duties of Man, which includes a provision on “author’s rights.” Secondly, it was contemporary to the adoption of the Berne International Copyright Convention that enshrined the concept of author’s “moral rights” into international copyright law. The French delegation proposed to include language on the protection of moral and material interests in the UDHR, as they felt that article 17 UDHR on property rights did not protect “moral rights,” such as the integrity of an author and his creation. The French proposal was backed

by a majority of Latin American countries due to the link with the American Declaration.<sup>15</sup> However, it is interesting to note that the United States and United Kingdom were strongly opposed to the French interpretation, arguing that copyright and related rights<sup>16</sup> are not fundamental human rights.<sup>17</sup>

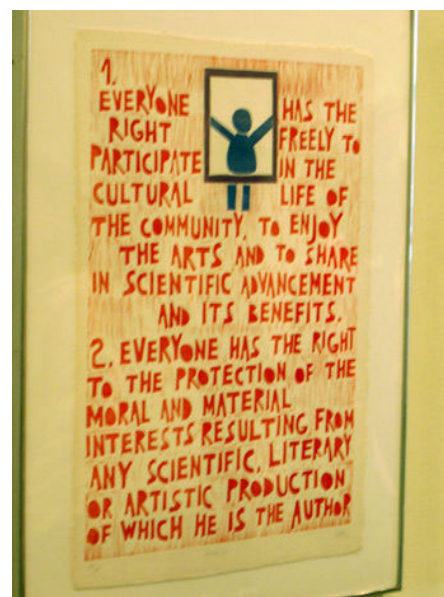
## B. Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The full text of article 15 ICESCR is as follows:

1. The State parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the State parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The State parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The State parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

The right to the protection of moral and material interests of authors was repeatedly rejected from the article on “cultural rights,” during the drafting of the international covenants on human rights in the 1950s.<sup>18</sup> This was due to concerns of socialist countries at the time, that this article would be protecting an individual author’s rights in opposition to the rights of the community. Hence, the adoption of article 15 cannot be detached from the context of the cold war debate on government control over art, culture and science. Indeed, the right to the protection of moral and material interests of authors was only adopted at the last minute, favoured by capitalist countries and strongly opposed by socialist countries.

Therefore, it is interesting to note that throughout the drafting of article 27 UDHR and article 15 ICESCR, the right to the protection of moral and material interests of authors was controversial. Although the original intention of the French was to include it into the UDHR to



UDHR Article 27

guarantee protection of author’s “moral rights,” the link with copyright was refused by a number of countries, notably the United States. Furthermore, the adoption of article 15 ICESCR should not be dissociated from its context and differing points of view over property and the role of government in culture, art and science. These differences are still relevant today, as not all countries have the same approach to economic, social and cultural development. Finally, it is important to stress that throughout these debates the “authors” referred to in article 15 were individual artists and creators, or the community at large, but not private corporations.

## II. The implications of General Comment No. 17 on the interpretation of the relationship between intellectual property and human rights

### A. The scope and content of General Comment No. 17

General Comment No. 17 (2005) only focuses on one sub-paragraph of article 15 ICESCR, rather than the article as a whole. Limiting a General Comment to this sub-paragraph was strongly criticized by commentators for failing to take into account the complex nature of cultural rights and their relationship with IP rights (see sec-

tion B below). The reasons for choosing this approach were explained by the Chair of the Committee on Economic, Social and Cultural Rights, Virginia Bonoan Dandan, in the opening remarks of the Day of General Discussion held in 2000.<sup>19</sup>

Firstly, Ms Dandan stated that members of the Committee believed that the debate on article 15 (1) (c) was most urgent, as there was a need to identify the human rights dimensions of IP policy. Also, they believed that article 15 as a whole was too large to be the subject of a single General Comment. Hence, the Committee agreed to rapidly draft subsequent General Comments on the right to take part in cultural life (article 15 (1) (a)), and the right to enjoy the benefits of scientific progress and its applications (article 15 (1) (b)). Work has already begun on a General Comment on the right to take part in cultural life, but is progressing slowly as the issue was diverted by the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions in October 2005.

General Comment 17 is based on a similar structure of analysis as previous CESCR General Comments. It therefore begins by setting out its scope and basic premises of analysis. It then goes on to outline the normative content of the right, conditions for States Parties' compliance, States Parties' obligations, violations, implementation at the national level and the obligations of actors other than State parties.

The General Comment begins by clarifying the distinction between IP and human rights. It states that "while under most intellectual property systems, intellectual property rights, often with the exception of moral rights, can be allocated, limited in time and scope, traded, amended and even forfeited, human rights are timeless expressions of fundamental entitlements of the human person."<sup>20</sup> Moreover, the text states that the scope of protection of the moral and material interests of the author "does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements." It goes on to add "it is therefore important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1 (c)."<sup>21</sup>

This first section also explains the relationship between article 15 (1) (c) and the other rights in article 15 as being "mutually reinforcing and reciprocally limitative."<sup>22</sup> Moreover, it states that article 15 (1) (c) has an "economic dimension" linked to other Covenant rights such as the right to work, the right to adequate remuneration and the right to an adequate standard of living. Furthermore, this right is linked to human rights in the UDHR and other international human rights instruments, notably the right to own property, freedom of expression including freedom to seek, receive and impart information and ideas of all kinds, the right to full development of the human personality, the rights of cultural participation and the rights of culturally specific groups.

In the normative element of the General Comment "author" is defined as "the creator, whether man or woman, individual or group of individuals, of scientific, literary or artistic productions, such as, *inter alia*, writers and artists."<sup>23</sup> This definition is positive in as much as it broadens the scope of protection to indigenous communities and cultural minorities, whilst explicitly limiting protection to "natural persons." Indeed, the General Comment states that the entitlements of legal entities under IP law are "different in nature" and therefore "not protected at the level of human rights."

However, in the definition of "benefit from the protection" it is stated that protection "need not necessarily reflect the level and means of protection found in present copyright, patent and other intellectual property regimes, as long as the protection available is suited to secure authors the moral and material interests resulting from their productions."<sup>24</sup> This reference to IP standards is particularly confusing considering that IP rules may not necessarily be the most appropriate legal tool to protect authors.

Likewise, the statement that article 15 (1) (c) "by no means prevents States parties from adopting higher protection standards in international treaties" provided that these standards "do not unjustifiably limit the enjoyment of other Covenant rights"<sup>25</sup> could be risky in practice. Indeed, States could use this statement to argue in favour of higher IP standards, for instance that higher patent protection is justified in order to promote research and development of new medicines, even if this higher protection has the effect of increasing cost and reducing access to medicines.

In the section on conditions for States parties' compliance, the General Comment states that the precise application for ensuring availability, accessibility and quality of protection depends on "the economic, social and cultural conditions prevailing in a particular State party."<sup>26</sup> This reference appears to support the idea of an approach to implementation of this human right via pro-development policies or *sui generis* systems. However, the section on specific State parties' obligations to *respect, protect and*

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Strict patents on medicines have given rise to international concern about the cost of HIV/AIDS drugs

*fulfil* the right under article 15(1) (c), appears contrary to a development perspective. Indeed, in the definition of the requirement to *protect* the moral and material interests of authors, the General Comment urges State parties to “prevent unauthorized use of scientific, literary and artistic productions which are easily accessible or reproducible through modern communication and reproduction technologies, e.g., by establishing systems of collective administration of authors’ rights or by adopting legislation, requiring users to inform authors of any use made of their productions and to remunerate them adequately.”<sup>27</sup> Such an approach would impede access to knowledge or impede alternative systems such as Creative Commons licensing, Free Software or other methods of freely sharing information.

A further issue in the requirement to *protect* is the need to ensure that “States provide effective protection of the interests of indigenous peoples relating to their productions, which are often expressions of their cultural heritage and traditional knowledge.”<sup>28</sup> This section requires protection measures to respect the “principle of free, prior and informed consent” in relation to access to genetic resources and benefit-sharing enshrined in the Convention on Biological Diversity.<sup>29</sup> It also emphasizes the need to take into account the preferences of indigenous groups and the provision of collective administration systems. In addition, the General Comment explicitly encourages countries to provide protection under national IP regimes and to “prevent unauthorized use of scientific, literary and artistic productions of indigenous peoples by third parties.” Although this reference supports efforts to end biopiracy and misappropriation, the General Comment fails to take into account that IP systems may be completely inappropriate for the protection of traditional knowledge and traditional forms of expression.

A further issue in the section on State party obligations is the need to balance the right of authors with other rights in the Covenant. Here, the General Comment expressly says that States must strike a balance between the individual rights of authors and the public interest in “enjoying broad access to their productions.”<sup>30</sup> Furthermore, the General Comment recommends that States undertake an impact assessment prior to the adoption and after a period of implementation of the legislation for the protection of the moral and material interests of authors resulting from their scientific, literary or artistic productions. The General Comment states that “State parties have a duty to prevent that unreasonably high costs for access to essential medicines, plant seeds or other means of food production, or to schoolbooks and learning materials, undermine the rights of large segments of the population to health, food and education. One should hope that if it came to the crunch, this part of the General Comment would prevail over those mentioned above, which could limit free sharing of information, and insufficiently take into account the needs of indigenous groups.

The General Comment requires State parties to take all legislative measures to comply with the “core obligations”

of the right to the moral and material interests of authors.<sup>31</sup> This means that States have to take immediate steps to satisfy the “minimum essential levels” of the right in article 15 (1) (c). This includes “effective protection” of moral and material rights of authors; measures to respect and protect basic material interests of authors in order to allow them to enjoy an adequate standard of living; measures to ensure equal and non-discriminatory access to remedies; measures that strike an adequate balance between author’s rights and other rights in the Covenant such as the rights to food, health, education, the right to take part in cultural life and the right to enjoy the benefits of scientific progress and its applications; and measures capable of providing “international assistance and cooperation” in enabling developing countries to fulfil these obligations.<sup>32</sup>

The full extent of these “core obligations” only becomes apparent in the section on violations of article 15 (1) (c). In this section, the General Comment describes the circumstances in which a State party may be found to be in violation of the Covenant. It distinguishes a State’s “inability” from its “unwillingness” to comply with its obligations, noting that it is unwillingness that constitutes a violation. The General Comment then distinguishes *acts of commission* – such as the formal repeal of legislation protecting the moral and material interests resulting from one’s scientific, literary and artistic productions – from *omissions*, such as the refusal to ensure that third parties adequately compensate indigenous “authors.”<sup>33</sup> In relation to core obligations, the General Comment states that there is a violation if State parties adopt retrogressive measures incompatible with their core obligations. This is particularly problematic, as States parties that choose to, say, repeal legislation that granted strict IP protection to “authors,” in order to facilitate sharing or dissemination of educational materials, or to reduce the cost of medicines, could be at risk of being found in violation their core obligations.

## B. Implications of General Comment No.17

The approach taken by the Committee on Economic, Social and Cultural Rights in singling out article 15 (1) (c) is strongly contested, as one cannot dissociate the right to the protection of moral and material interest of authors from cultural rights as a whole. Indeed, commentators have argued that focusing a General Comment on individual authors’ rights to scientific or literary production in isolation of the right to take part in cultural life, article 15 (1) (a), and the right to enjoy the benefits of scientific progress and its applications, article 15 (1) (b) fails to look at the current reality of scientific inventions and literary products as being almost wholly owned by corporations.<sup>34</sup>

Furthermore, even if the General Comment distinguishes the right to moral and material interests of authors from

IP rights in its introductory section, the normative elements of the Comment repeatedly refer to IP protection as a way of implementing this part of article 15. This is problematic, as it does not make explicit enough that there may be instances where IP protection is not appropriate and other *sui generis* systems should take over, or indicate when these instances might arise. Furthermore, it does not emphasize enough that “moral” interests could be protected by other legislative measures such as defamation laws, or that “material interests” could be best protected with a minimum wage for artists or systems capable of providing an adequate standard of living to independent inventors and artists.

Finally, the General Comment’s detailed list of violations of article 15 (1) (c) by acts of commission and omission introduces a “violations approach” to author’s rights that could be misinterpreted by IP lawyers.<sup>35</sup> Indeed, as the General Comment promotes IP protection as the preferred method of protection of the “moral and material interests of authors” there is a danger that this will lead to a system of protection that will be even stricter than the present copyright or patent systems, which currently benefit corporate actors. Furthermore, this could have adverse consequences on the realization of development commitments and human rights, including the rights to food, health, education, the right to take part in cultural life and the right to enjoy the benefits of scientific progress and its applications.

## Conclusion

General Comment No.17 (2005) has helped clarify the long-standing debate on the relationship between IP rights and human rights, by stating that IP rights are not human rights. Moreover, it has opened the scope of protection of the right to “benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” under article 15 (1) (c) ICESCR to indigenous communities and cultural minorities, whilst explicitly excluding legal persons.

However, it has also created additional confusion for human rights advocates and policy-makers by promoting IP protection as the preferred method of implementation of this human right. This approach does not sufficiently take into account the changing nature of IP law and the fact that current IP systems tend to favour corporate interests at the expense of individual authors, inventors and artists.

Moreover, the fact that the General Comment is focused solely on article 15 (1) (c), means that States parties to the ICESCR will have difficulty balancing author’s moral and material interests with other cultural rights under article 15, including the right to take part in cultural life (article 15 (1) (a)) and the right to enjoy the benefits of scientific progress and its applications (article 15 (1) (b)). Hence, it will only be once the Committee on Economic, Social and Cultural Rights has adopted General Comments on articles 15 (1) (a) and 15 (1) (b) that human rights advocates and policy-makers will be able to grasp the full implications of article 15 on the relationship between IP rights and human rights.

Therefore, in addition to expeditiously adopting a General Comment on the rest of ICESCR article 15, the Committee on Economic, Social and Cultural Rights should issue a clarification regarding the elements of General Comment 17 that could be interpreted in ways that go against the realization of the rights in the ICESCR. In particular, the clarification should expressly acknowledge that IP rules may not necessarily be the most appropriate legal tool to protect the moral and material interests of authors, particularly when “authors” are indigenous groups or holders of traditional knowledge, as IP systems may be completely antithetical to their beliefs, and thus contrary to their cultural rights.

The clarification should also emphasize that the caution that the General Comment expresses in its paragraph 35, that protection of the moral and material interests of authors should not impede realization of other human rights, applies throughout the General Comment – in order to dispel the possibility that actors advocating strict IP standards rely on other parts of the General Comment to support their positions.

*This Policy Brief was written by Davinia Ovet, Programme Officer.*

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### Endnotes

<sup>1</sup> The right to health is enshrined in article 12, International Covenant on Economic, Social and Cultural Rights (ICESCR) article 24 of the Convention on the Rights of the Child (CRC). It is further interpreted by the Committee on Economic, Social and Cultural Rights’ (ICESCR) General Comment No. 14 (2000) and the Committee on the Rights of the Child (CRC) General Comments No. 3 (2003) on HIV/AIDS and the rights of the Child and No.4 (2003) on Adolescent Health.

<sup>2</sup> The right to food is enshrined in article 11 ICESCR and article 27 CRC. It is further developed in ICESCR General Comment No. 12 (1999).

<sup>3</sup> The right to education is enshrined in article 13 ICESCR and article 28 CRC, and is further interpreted by General Comment No. 13 (1999).

<sup>4</sup> Article 27(2) Universal Declaration of Human Rights (UDHR) and article 15(1) (c) ICESCR.

<sup>5</sup> Philippe Baechtold, “Public Policy Objectives and Intellectual Property Rights. The Examples of Public Health and Indigenous Peoples,” in Hernando de Soto and Francis Chevenal (eds.), *Realizing Property Rights*, Swiss Human Rights Book, Vol.1, Rüffer & Rub Publishers, 2006.

- <sup>6</sup> The “Group of Friends of Development” includes Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania, Uruguay and Venezuela. See also statements by Brazil and Peru, *WIPO Document, Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), Revised Draft Report*, PCDA/1/6 Prov.2, 25 April 2006, paragraphs 91 and 93 respectively. See also statement by Uruguay, *Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA)*, Second Session, 27 June 2006.
- <sup>7</sup> WIPO Document, *Proposal to Establish a Development Agenda for WIPO: An Elaboration of Issues Raised in Document WO/GA/31/11*, IIM/1/4, 6 April 2005.
- <sup>8</sup> See for example the statement of the Civil Society Coalition (CSC), Report of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), Geneva, February 2006, PCDA/1/6/Prov. 2, 25 April 2006. See also 3D -> Trade – Human Rights – Equitable Economy, *Intellectual Property, Development and Human Rights: How Human Rights Can Support Proposals For a World Intellectual Property Organization (WIPO) Development Agenda*, Policy Brief 2, February 2006.
- <sup>9</sup> See Ronald A. Cass, “Intellectual Property and Human Rights,” *Are Intellectual Property Rights Human Rights?* The Federalist Society for Law and Public Policy Studies, 2006.
- <sup>10</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 17 (2005), Adopted on 21 November 2005*, E/C.12/GC/17, 12 January 2006, available at <[www.ohchr.org/english/bodies/cescr/comments.htm](http://www.ohchr.org/english/bodies/cescr/comments.htm)>
- <sup>11</sup> CESCR, *Day of General Discussion, the right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15(1) (c) of the Covenant)*, organized in cooperation with WIPO, Summary Record, E/C.12/2000/SR.76 and E/C.12/2000/SR.77, 27 November 2000. See also 3D -> Trade – Human Rights – Equitable Economy, *Background Note: Intellectual Property, human rights and the drafting of the General Comment on article 15(1)(c) ICESCR*, 2005.
- <sup>12</sup> CESCR, *Follow-up to the day of general discussion on article 15(1) (c), Human rights and intellectual property, Statement by the Committee on Economic, Social and Cultural Rights*, E/C.12/2001/15, 26 November 2001.
- <sup>13</sup> See William New, *UN Committee Adopts Position on IP and Human Rights*, Intellectual Property Watch, 21 November 2005.
- <sup>14</sup> See Philippe Cullet, *Human Rights and Intellectual Property Rights: Need for a New Perspective*, IELRC Working Paper 4, 2004.
- <sup>15</sup> CESCR, Background paper, Maria Green, International Anti-Poverty Law Center, *Drafting History of article 15(1) (c) of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2000/15, 27 November 2000.
- <sup>16</sup> Copyright grants creators of works the exclusive right to limit or authorize reproduction, public performance, recordings, broadcasting, translation or adaptation. Related rights are rights that are “around” a copyrighted work, aiming to protect the rights of performers, producers of sound recordings and broadcasters. See <[www.wipo.int/copyright/en/faq/faqs.htm#related\\_rights](http://www.wipo.int/copyright/en/faq/faqs.htm#related_rights)>
- <sup>17</sup> See Orit Fischman Afori, *Human Rights and Copyright: The Introduction of Natural Law Considerations Into American Copyright Law*, *Fordham Intell. Prop. Media & Ent. L.J.* Vol. 14, 497, 2003-2004, p. 520.
- <sup>18</sup> Note 15 above, paragraph 13.
- <sup>19</sup> See note 11 above.
- <sup>20</sup> General Comment No.17, paragraph 2.
- <sup>21</sup> General Comment No.17, paragraph 3.
- <sup>22</sup> General Comment No.17, paragraph 4.
- <sup>23</sup> General Comment No.17, paragraph 7.
- <sup>24</sup> General Comment No.17, paragraph 10.
- <sup>25</sup> General Comment No.17, paragraph 11.
- <sup>26</sup> General Comment No.17, paragraph 18.
- <sup>27</sup> General Comment No.17, paragraph 31.
- <sup>28</sup> General Comment No.17, paragraph 32.
- <sup>29</sup> See articles 1, 15 and 8(j), Convention on Biological Diversity (1992).
- <sup>30</sup> General Comment No.17, paragraph 37.
- <sup>31</sup> General Comment No.17, paragraph 39.
- <sup>32</sup> General Comment No.17, paragraph 40.
- <sup>33</sup> General Comment No.17, paragraph 45.
- <sup>34</sup> X. Seuba Hernández, *Derechos humanos y derechos de propiedad intelectual*, Observatori DESC, I Curso de derechos económicos, sociales y culturales, 2006.
- <sup>35</sup> Laurence Helfer, *Towards a Human Rights Framework for Intellectual Property*, 40 U.C. Davis L.Rev. (forthcoming 2006-2007).



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