



Expert Contributor
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Intellectual Property as a Human Right

Mexico has the obligation to promote respect for intellectual property rights, as well as promote investment and technology transfer.

1. International Treaties

International Treaties are agreements entered into by two or more states as sovereign entities, on diplomatic, political, economic, cultural, or other matters of interest to both parties.

2. International Treaties and Human Rights

Whether or not the Radilla case was the inspiration for the Constitutional reform of June 10, 2011, it is certain that the protection of human rights recognized by international treaties was expressly included, which favored that the means of constitutional control became the means for the application of international law on human rights in our country.

It is not surprising that it is in a matter like intellectual property international treaties are of great relevance and frequently used.

I believe that this is due to the immaterial aspect of rights that can cross borders in a much easier and richer way than material goods, or due to the influence on international law, derived precisely from the aforementioned phenomenon of globalization and the free market, which requires homogeneous rules and regulations on matters of common interest, such as industry and commerce, whereas the engine is intellectual property.

Approximately 40 years ago, the Mexican state decided to be a protagonist in the concert of international free trade agreements, which brought with them rules and guidelines for healthy and optimal trade practices, among which industrial property is one of the many rules in a free trade agreement of the latest generation.

It seems to be a dominant truth that no one would want to agree with someone who plays the game according to different rules and who does not meet the minimum requirements for developing a fair commercial activity, whether domestic or international. In commercial and industrial activities, industrial property is one of the tools for said legal coexistence. Therefore, industrial property is, and I believe it will continue to be, a relevant factor in many international transactions, agreements, and negotiations, both between individuals and states.

3. International Treaties and Intellectual Property

Mexico is a sovereign state and decides the industrial property system that best suits it internally, but if for economic strategy, commercial, political or social reasons the Mexican state has opted for international free trade agreements with countries that have high standards of protecting industrial property rights, it would be naive to think that these trading partners would agree to convening with other trading partners who do not have the same protection for the same inventive or creative activities.

Therefore, international treaties have had an impact on the legal framework of industrial property, not only in Mexico, but in many countries. The Industrial Property Law, enacted in 1991, derived from the negotiations of the North American Free Trade Agreement with the US and Canada (NAFTA) and the Trade Related Aspects of Intellectual Property Rights (TRIPS). The current Federal Law for the Protection of Industrial Property was no exception, since it was enacted to fulfill what was agreed in the United States-Mexico-Canada Agreement (USMCA).

4. Intellectual Property as a Human Right

Our Constitution ignores that inventive or creative activity is a human right derived from the most intimate action, which is the creation of works and the inventive activity used for the satisfaction of man himself.

Indeed, our Constitution does not consider such inventive and creative activity as a right, but as a privilege, which seems to be granted at the will of the executive and not as something that corresponds to inventors and authors, such as a property right, over an asset, as one could have a right over any tangible asset.

The 2011 Constitutional amendment on human rights denounced and in a certain way confirmed the constitutional inconsistency regarding intellectual property and international treaties and there is no doubt that this will help fill the gaps left by Constitutional inconsistency and legislative inactivity.

On the subject, the international conventions on human rights have indicated that they are universal, interrelated, interdependent and indivisible. Human rights are rights inherent to all human beings,

regardless of nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other condition. The principle of non-discrimination is a transversal principle in international human rights law.

Personally, I have no doubt that the right of inventors to protect their inventions against others is a human right; however, the right to exploit the invention would be a property right. In this regard, it seems that there is less debate about copyright than on invention patents.

Indeed, I believe that the right to legal protection of an invention is indisputably a human right, which in the modern state has been reflected in a patent title, where the right to the invention materializes, which consists of exclusive exploitation temporarily and territorially.

In this case, the human right or the legal protection of the invention is reflected in the right of exclusive exploitation of the same and the paternity right, so that, if there are impediments to its due exercise, the human or fundamental right is infringed.

The right over the invention is inalienable to the inventor. The ownership can be regulated by the state in its duration, mode, and form of exercise of the right, for which I postulate that the right over inventions and improvements must be recognized and not conferred by the state. Additionally, the exclusive right must be defined positively, not as is currently the case, which is defined as what it is not, since our Constitution tells us that said privileges conferred by the state are not a monopoly, which was not always the case, as indicated by the constitutional history of our country.

The syllogism embodied in this article establishes that the rights over works and inventions are human rights that should be recognized by our Constitution instead of granting privileges that seem to go back to monarchical ordinances rather than a right derived from the most intimate nature of the creative or inventive activity of human beings. If the right to intellectual property, *lato sensu*, is a human right, the control of conventionality of international treaties on human rights and intellectual property signed by Mexico is fully feasible and viable to make up for the absences, deficiencies and contradictions that our domestic legislation could have on the matter if the substantive and essential law protected by the international treaty on human rights in the matter of intellectual property is disrupted, which is the engine of human innovation and consequently of the life sciences.