

RAISING THE RIGHT TO HEALTH CONCERNS WITHIN THE FRAMEWORK OF INTERNATIONAL INTELLECTUAL PROPERTY LAW*

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ABSTRACT

Balancing the trade-off between the pursuits for economic interests (from the protection of the intellectual property rights) and public health (from promotion of human rights to health) is always a complicated issue and sometimes a tragic choice. Even though international trade laws afford member countries the flexibility to impose restrictions on intellectual property rights to protect public health, individuals' rights to health (especially the right to access affordable medicines) are still frequently sacrificed. This article proposes that applying the human rights approach to the international intellectual property regime would provide the state an objective and monitorable standard to balance the conflicts between the intellectual property right and the right to health. Furthermore, by defining the scope of the right to health protection, this article develops an independent assessment mechanism (the right to health impact assessment for intellectual property policies) to provide both developing and developed

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countries legal grounds to refuse unjustified intellectual property protection (when fundamental rights to health are at stake) and to prevent the TRIPS-exemptions from being misused (when only some vague notion of public health is at stake).

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