

- Dear Kate  
Human Rights -

Dear Kate,

Here are further corrections to my article (Chapter 10).

These changes are important.

Thank you for your help.

I shall be travelling part of tomorrow (Thursday) but should be able to access email Thursday night if I'm lucky. My cel phone is [REDACTED]  
[REDACTED]

*Wendy*

Wendy Gordon

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First page of the chapter (p 190)

In footnote 1, at the end of the first paragraph, delete the phrase "who chose not to be listed as a co-author."

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**At the start of footnote 2, the following phrase should be deleted:**  
The human right to benefit from the protection of moral and material rights of authors

In its place should go: "Such a right"

So the sentence that starts footnote 2 as a whole would read

Such a right is recognized in a number of international and regional human rights instruments.

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IN FOOTNOTE 5, THE EXISTING LANGUAGE NEEDS  
SIGNIFICANT CHANGE

NEW FN 5:

5 That patent laws have significant differences from human rights under Article 15 can be seen, for example, in *The Impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights*, E/CN.4/Sub.2/2001/13, 27 June 2001 – available at [http://www.unhchr.ch/Huridocda/Huridocda.nsf/\(Symbol\)/E.CN.4.Sub.2.2001.13.En?Opendocument.pdf](http://www.unhchr.ch/Huridocda/Huridocda.nsf/(Symbol)/E.CN.4.Sub.2.2001.13.En?Opendocument.pdf). Although *The Impact* document sees distinct differences between enacted intellectual-property law ('more akin to a privilege'; can be 'licensed or assigned', id. at paragraph 14) and human rights ('inalienable', id.).  
[THE FOOTNOTE SHOULD END THERE]

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In FN 11, the citation to Dreyfuss should be changed to whatever format you utilize for citing chapters within this volume. The page reference to her pg 7 should be altered to page 80 of this volume. Similarly, at the end of the first sentence of the second paragraph of the footnote, a reference to page 80 should be inserted. See underlined items below

Like so:

11 Dreyfuss, Rochelle C., 'Patents and Human Rights: Where is the Paradox', [CITE TO THIS VOLUME, HER CHAPTER 4]  
~~available at <http://ssrn.com/abstract=929498>~~. I agree with Dreyfuss' central point: that the human rights vision of ICESCR is not the basis on which 'the world's patent rights are structured. Instead, the perspective is purely utilitarian'. Id. at 7 80. This point is made clear in General

Comment 17, Article 1: 'Human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity . . . for the benefit of society as a whole.' Comm. on Econ., Soc. & Cultural Rights, General Comment No. 17: 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 (Art. 15(1)(c)), UN Doc. E/C.12/2005 (Nov. 21, 2005) [hereinafter General Comment No. 17], available at [www.seprava.ru/library/?content=file&id=102](http://www.seprava.ru/library/?content=file&id=102).

At one point, Dreyfuss's excellent paper for some reason (perhaps rhetorical) treats the notion of an author's human rights claim as if it might embody entitlement to 'all' benefits. *Id. at 80*. This is a bit of a straw man. Even a stalwart defender of property rights like philosopher Robert Nozick saw a natural-right justification for cutting off patent duration. Nozick, Robert (1974), *Anarchy, State and Utopia* (New York: Basic Books) at 178–82.

----- You should also please change the bibliographic reference to Dreyfuss, which now shows only the SSRN version of her chapter, to be treated as you treat other references to chapters in the instant volume-----  
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The reference in note 8 to "quoted in note 2" should be "quoted in note 4"

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The reference in note 14 that says "quoted at note 8" should be "quoted in note 7"

In text at page 193, penultimate line, there should be no comma between the word “health” and the call to fn 14. Also there should be an “and” after the footnote call—to read as follows

In addition, of course, many commentators point to the provisions in the ICESCR that give the public rights to health[NO COMMA]14 AND to participate in culture and benefit from science,15 and to the free speech rights in...

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Typo on page 194: the word "chaper" should read chapter" ( first full paragraph, second word)

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Typo in fn 18: the first referenced article should be note 13, not note 14, like so:

18 Gordon, *A Property Right in Self-expression*, above note ~~14~~,13 at 1561–2. Some of the Lockean concern...

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typo on page 195 second paragraph, end of the first sentence: the phrase "design to protect" should be "designed to protect"

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typo on cross-reference: all cross-references to General Comment 17 should be to footnote 11, not n.12. The erroneous cross reference occurs in a few places: I found it in notes 15, 20, 22- 5, 33, 50, 53, and 54

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note 31, second to last line: the word article should be capitalized, Article  
like so

The passage of the Declaration may have played some role in the adoption of Article 27(2) of the UDHR, see Yu, above note 2, at 1053–8, which Article in turn affected the language of the ICESCR.

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Footnote 32, please delete “second” and delete “later-in-time” so that the first sentence of the footnote would read:

32 A corollary of the second approach would be a rule that freed ~~second~~–inventors from liability so long as their later-in-time inventions did not result from copying. Two quite different but thoughtful philosophers have argued that a proper conception

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Text top of page 199: please delete the words "We hope that" at start of first paragraph, and begin sentence with  
By focusing...

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typo at note 35: the number 9 after the word Chien should instead be the start of a parentheses: like so

35 Lemley, Mark A. and Colleen V. Chien (2003), ‘Are the U.S. Patent Priority Rules Really Necessary?’, 54 *Hastings L.J.* 1299, 1303.

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Cross-reference: In note 43, reference to the Lemley & Chien article should show it as appearing at note 35 (right now the reference is erroneously to note 37)

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An error at last line of n 36 misquotes a source and changes the meaning of the sentence. The reference should be to a 'first to invent system' NOT to a "first to file" system. The last line of n 36 should thus accurately quote the source as saying:  
‘the U.S. first ~~to file~~ to invent system has a significant effect on outcomes.’ Id. at 1333.

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page 200, second full paragraph, the parenthetical statement “(and laws elsewhere)” should be DELETED

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Page 201, The start of the first full paragraph needs to be rewritten. It should read:

In addition, of course, both the "first to file" and "first to invent" systems often deny patent rights to independent inventors, even though, as Becker argues [NOW CONTINUE WITH ORIGINAL SENTENCE]

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Fn 44 I wrote you about this in my email of Nov 17, but didn't fully correct the error. (I blame the flu).

In the following sentence, the phrase "the first" should become the word "one", and "the second" should become "the other"

#### OLD LANGUAGE

In the US, if two persons independently invent, and the first person obtains a patent, the second is an infringe

#### CORRECTION

In the US, if two persons independently invent, and one person obtains a patent, the other is an infringer

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Page 202: In the sentence following the call to note 45, the word "second" should be "independent" like so:

If all the independent researchers each received a patent, or even if ~~second~~ independent inventors merely received a defense, the various independent inventors...

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Page 204 Conclusion

The word “offender” needs to be plural, and the word ‘second’ needs to come out

Like so, please:

The ‘first to file’ systems are the greatest offenders against a search for authors, but any system is suspect that denies patents to independent ~~but~~ ~~second~~ inventors. Given the crucial importance of ‘authorship’ to the ICESCR subprovision that grants ‘material’ rights to scientists, and given the relative *un*importance of ‘authorship’ to national patent laws, it makes little sense for patent holders to claim a presumptive gloss of ‘human rights’ for their claims.

----- the following change is preferred, but optional. the other changes are necessary--

There's a repetition that should be eliminated. from note 22 please delete the entire last sentence because essentially the same information appears later in fn 26)

So note 22 should read please simply as follows:

22 The Comment uses the term ‘creator’. General Comment 17, above note 12.