

# Intellectual Property Law and Human Rights

**Semester:** Spring Semester- FS 2025

**Root Number:** 494461

**ECTS:** 2 ECT – (7 hours)

**Lecturer:** Prof Thomas Cottier (WTI)

**Dates:** **6, 13 and 20 March, 2025**

**Room:** This is a hybrid course. The course will be held on-site at Silva Casa Auditorium in the World Trade Institute and online on Zoom. Physical presence is highly recommended, but online attendance is perfectly possible to follow lectures and participate in discussions.

## **Audience:**

- Persons interested in the legal and policy interface of intellectual property and human rights protection, particularly in the fields of health, nutrition and the cyber economy
- Government officials; Embassy staff; people working for international organizations and NGOs, industry and in legal practice
- Master of Advanced Studies of International Law and Economics (MILE) Students- World Trade Institute / Faculty of Law, Unibe
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Researchers and scholars in human rights law, trade law, climate change law or intellectual property
- Students from different universities across Switzerland

## **Course Description**

The course addresses the conceptual differences and interaction of intellectual

property and human rights. It discusses the interrelation of the two disciplines in the field of the right to health, access to medicines and biotechnology, in the context of climate change mitigation and adaptation and in the digital economy. The three lectures focus on international law, in particular the TRIPs Agreement of the WTO, human rights instruments, sustainable Development Goals (SDGs) and the emerging duty to act under the principle of Common Concern of Humankind.

Intellectual property and human rights protection often are seen in tension, if not contradiction. On the one hand is the allocation of exclusive property rights in knowledge and information. On the other hand is the right of all humankind to participate in, and benefit from, scientific and technological progress made. The tensions have been mainly discussed in relation to the right to health and more recently, as a problem of access to medicines and vaccines. Other areas of tension include the digital economy and the management of social media, as well as access to sustainable technology in the context of climate change. The relationship is a complex one, as intellectual property is an important foundation of knowledge and information, while human rights protect a wide range of normative claims based upon the protection of human dignity, entailing both civil and political, as well as economic and social rights.

### Lecturer Thomas Cottier

Dr Thomas Cottier, former Managing Director of the World Trade Institute, is Professor Emeritus of European and International Economic Law at the University of Bern. He published widely in the field of international economic law, with a particular focus on constitutional theory and intellectual property. He directed the national research programme on trade law and policy (NCCR International Trade Regulation: From Fragmentation to Coherence) located at the WTI from 2006-2014. He is an associate editor of several journals. He was a visiting professor at the Graduate Institute, Geneva, the Paris I Sorbonne, University of Barcelona, and regularly teaches at the Europa Institute Saarbrücken, Germany, at Wuhan University, China, at the University of Torino and more recently at the University of Ottawa, Canada. He was a member of the Swiss National Research Council from 1997-2004 and served on the board of the International Plant Genetic Resources Institute (IPGRI) Rome during the same period. He served the Baker & McKenzie law firm as Of Counsel from 1998 to 2005. He held several positions in the Swiss External Economic Affairs Department and was the Deputy-Director General of the Swiss Intellectual Property Office. Prof. Cottier has a long-standing involvement in GATT / WTO activities. He served on the Swiss negotiating team of the Uruguay Round from 1986 to 1993, first as Chief negotiator on dispute settlement and subsidies for Switzerland and subsequently as Chief negotiator on TRIPs. He has served as a member or chair of several GATT and WTO panels and currently serves on the roster of 10 appeal arbitration panelists of the MPIA.

### Learning Objectives

The course expounds the theoretical and legal foundations of the two fields and explores the interaction in a mutually supportive manner in international and domestic law. It seeks to attain the following goals:

- To understand the utilitarian concept and function of IPRs
- To understand the idealistic concept and functions of human rights and the relationship to SDGs

- To explore the interrelation of the two fields, and the potential of mutual supporting each other in shaping and applying the law
- To understand the interaction of IPRs and Human Rights in the health sector, in particular pharmaceutical research and production, and dissemination of medicines
- To understand the interaction of IPRs and Human Rights in the Digital Economy, in particular in data protection in social media.
- To discuss alternative and supplementing approaches in addressing the interface of human rights and intellectual property

### Assessment

- Students' knowledge will be assessed on the basis of a take home exam which needs to be completed on an individual basis.
- Take-home assignment will be made available on 21 March 2025, 9:00 (CET) and is to be submitted on 30 March no later than 17:00 (CET) to [masters.wti@unibe.ch](mailto:masters.wti@unibe.ch)

### Course Overview

Date and Time	Day	Time	Topic
<b>6 March, 2025</b>	Thursday	16:30 - 18:30	Foundations: Intellectual Property and Human Rights
<b>13 March, 2025</b>	Thursday	16:30 - 19:00	IPRs and the Right to Health: Access to medicines and live science products
<b>20 March, 2025</b>	Thursday	16:30 - 19:00	IPRs, Human Rights in Climate Change and the Digital Economy

**Thursday 6 March, 2025**

**Lecturer: Thomas Cottier**

**Subject**

- The concept of intellectual property protection
- The concept of human rights protection and its role in trade regulation
- The interface in theory and international law case

**Topics**

- IPRs in international economic law, economic and legal rationale
- The utilitarian foundation of IPRs and the TRIPs Agreement
- Human Rights in international law: foundations and functions
- The protection of property in Human Rights law
- The legal restriction of IPRs and of Human Rights
- The Impact of human rights and SGDs in shaping and applying international economic law and IPRs
- How to address inequality?

**Compulsory Reading Material**

- Thomas Cottier, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in: The World Trade Organization: Legal, Economic and Critical Analysis (Macroy et al eds. 2005)
- Thomas Cottier, Trade and Human Rights: A Relationship to Discover, 5 JIEL 11-132 (2002)

**Recommended Reading Materials**

- Thomas Cottier, Principles and Main Sources of International Intellectual Property Law, Teaching Materials, September 2020
- Laurence R. Helfer, Toward a Human Rights Framework for Intellectual Property, 40 UC Davis Law Review 971-2019 (2007)
- Gabrielle Marceau, WTO Dispute Settlement and Human Rights, 13 EJIL 753-814 (2002)
- Thomas Cottier, The Implications of EC – Seals Products for the Protection of Core Labour Standards in WTO Law in: H.Gött ed., Labour Standards in International Economic Law (Springer: Cham 2018)
- Thomas Cottier, Copyright and the Human Right to Property: A European and International Case Law Approach, in Christoph Geiger, Craig Allan Nard, Xaxier Seuba, Intellectual Property and the Judiciary 117-142 (Cheltenham: Edward Elgar 2018).
- Thomas Cottier, Inequality and Intellectual Property: Equity, Innovation and Creative Imitation, in D. Benoniel, F. Gurry, K. Lee and P. Yu (eds.), Intellectual Property, Innovation and Global Inequality, Cambridge: Cambridge University Press 2025)

**Thursday 13 March, 2025**

**Lecturer: Thomas Cottier**

**Subject**

- IPRs and the Right to Health and Life in life sciences

**Topics**

- Patents, trade secrets in pharmaceuticals and biotechnology
- Licensing and Compulsory Licensing, patent pools, cross-licensing
- Public Private Partnerships
- The work on the Pandemic Treaty
- Linking IPRs, human rights and taxation

**Mandatory Reading Materials**

- Frederick M. Abbott, Jerome Reichman, Facilitating Access to Cross-Border Supplies of Patented Pharmaceuticals: The Case of the COVID-19 Pandemic, 23 JIEL 535-561 (2020)
- The draft negotiating text of the WTO Pandemic Agreement [13 March 2024]
- Thomas Cottier, Tax Incentives for Technology Dissemination and Investment by Exporting and Home States, April 27, 2023

**Recommended Reading Materials**

- Frederick M. Abbott, Intellectual Property and Technology Transfer for Covid-19 Vaccines: Assessment of the Record, WIPO 2023
- Frederik M. Abbott, Jerome Reichman, The Doha Round's Public Health Legacy: Strategies for the Production and Diffusion of Patented Medicines under the Amended TRIPS Provision, 10 JIEL 921-987 (2007).

**Thursday 20 March, 2025**

**Lecturer: Thomas Cottier**

**Subject**

- IPRs and Human Rights in Climate Change
- IPRs and Human Rights in the Digital Economy

**Topics**

- Case study: European Court of Human Rights, Klimaseniorinnen v. Switzerland, common concern of humankind and the duty to act,
- Case study: European Court of Justice, C-462/14 Schrems v. Data Protection Commissioner, October 6, 2015

**Mandatory Reading Materials**

- Thomas Cottier, Emerging Principle of Common Concern of Humankind, TESS 7. August 2024
- European Court of Human Rights, Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland, Application N 53600/20, Judgment of April 9, 2024, paras 538-554
- Mira Burri, Digital Trade and Human Rights, 117 AJIL 110-115 (2023)
- ECJ C-462/17 Schrems v. Data Protection Commissioner, October 6, 2015, ECLI:EU:C:2015:650

**Recommended Reading Materials**

- Thomas Cottier, The Principle of Common Concern of Humankind, in Thomas Cottier, Zaker Ahmad eds, The Prospects of Common Concern of Humankind in International Law 3-94 (Cambridge: Cambridge University Press 2021) (available WTI library)
- Zaker Ahmad, Trade Related Measures to Spread Low-Carbon Technologies: A Common Concern Based Approach, in in Thomas Cottier, Zaker Ahmad eds, The Prospects of Common Concern of Humankind in International Law 95-152 (Cambridge: Cambridge University Press 2021) (available WTI library)
- Mira Burri, Adapting Trade Rules for the Age of Big Data, in Anthony Taubman and Jayashree Watal eds., Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy 591-622 (Cambridge: Cambridge University Press 2022)
- Nigel Cory, Trade in Knowledge and Cross-Border Data Flows, in Anthony Taubman and Jayashree Watal eds., Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy 623-648 (Cambridge: Cambridge University Press 2022).