

# INTERNATIONAL ASPECTS OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Olena Pasechnyk<sup>1</sup>

**Abstract.** The article is devoted to the study of the main aspects of international protection of intellectual rights. The authors consider a number of international conventions and treaties, as well as the main provisions of cooperation between WIPO and the WTO under the Agreement on Trade-Related Aspects of Intellectual Property Rights. International treaties form a network that serves all member states, depriving them of the opportunity to act arbitrarily, at their discretion. They establish common norms and standards of IP protection, deviation from which is punishable by sanctions. By signing such treaties, states agree to partially abandon their own IP laws and follow the path of convergence with the laws of other countries. Such agreements exist for almost all categories of IP. The international system of public administration procedures in the field of intellectual property today is based on two conventions concluded in the late XIX century: Paris Convention for the Protection of Industrial Property of 20 March 1883 (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 (Berne Convention). These two Conventions played a fundamental role in the subsequent development of legal institutions. In the modern world, a certain system of international legal regulation of related rights has already developed, which directly affects the European related law, since, in particular, the norms of international law form the basis of the legal system of the European Union, and form international, including European, standards of intellectual property rights, including copyright and related rights. The main institutions dealing with IP protection on a global scale are the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). All member states of the European Union, as well as the European Community are members of the WTO organization, which has gained great importance in the field of intellectual property in connection with the adoption of the TRIPS Agreement. The TRIPS Agreement addresses five important issues: the principles of the trade system and international agreements on intellectual property, the minimum level of protection of intellectual property rights, measures to enforce these rules, the procedure for resolving disputes in the field of intellectual property, as well as transitional measures during the implementation of the systems. Ukraine is a party to more than 50 multilateral and bilateral international treaties on intellectual property. Therefore, it is advisable to determine the role of international standards in the system of intellectual property rights protection as integral components of the national legal system in Ukraine. This has become especially important since 24.02.2022 due to the outbreak of a full-scale war on the territory of Ukraine. The occupation of the territory of Ukraine by Russian invaders and the theft of industrial infrastructure, cultural heritage, art objects, which are also objects of intellectual property. Absolutization of copyright and related rights protection does not automatically mean bringing such protection to international standards. It is necessary to amend the legislation of Ukraine in order to harmonize the interests of copyright and related rights holders and the interests of society for access to cultural heritage, in the context of introducing only the minimum requirements of international legal acts for the protection of copyright.

**Key words:** intellectual law, intellectual property protection, Paris Convention, Berne Convention, Madrid Agreement, Geneva Treaty, WIPO, WTO, TRIPS, intellectual Ukraine, implementation of international agreements, protection of intellectual rights in war.

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<sup>1</sup> National University "Odessa Law Academy", Ukraine (*corresponding author*)

E-mail: [calmakina@gmail.com](mailto:calmakina@gmail.com)

ORCID: <https://orcid.org/0000-0002-2032-1851>



## 1. Introduction

With the rapid development of science and technology, human intellectual activity is becoming increasingly important in various spheres of material and spiritual production. All the latest scientific achievements and works of art are the results of creative work and are the objects of intellectual property (IP).

In accordance with international standards, the term "protection of intellectual property rights" means the activities of authorized state authorities to recognize rights, restore rights and remove obstacles that impede the realization of the rights and interests of subjects of intellectual property rights. In this regard, depending on the context, this term means legal protection of intellectual property rights, restoration of rights (protection of rights) of the right holder, enforcement of rights (Izbash, 2018).

Ukraine is a party to more than 50 multilateral and bilateral international treaties on intellectual property. Therefore, it is advisable to determine the role of international standards in the system of intellectual property rights protection as integral components of the national legal system in Ukraine.

This has become especially important since 24.02.2022 due to the outbreak of a full-scale war on the territory of Ukraine. The occupation of the territory of Ukraine by Russian invaders and the theft of industrial infrastructure, cultural heritage, art objects, which are also objects of intellectual property (Galupova, 2022).

For a long time, legal regulation of relations arising from the use of intellectual property was considered to be entirely the task of the national legislation of the states, which thereby encouraged creativity and promoted free and effective trade in the results of intellectual work for the purpose of economic and social development. Countries tried in different ways to regulate the balance between the rights of creators to their works and the right of the public to free access to these works. As a result, there were numerous inconsistencies between national laws on the protection of IP rights. The rights recognized within one country, in the absence of special international agreements, did not exist for the rest of the countries.

It turned out that without clear regulation of the norms of use of intellectual goods international cooperation in almost all areas of human knowledge is impossible: in the field of scientific research, medicine, nanotechnology, military, culture, etc.

The need for international IP protection, which is ensured through the establishment of appropriate contacts at the international level, has become obvious. In the light of accelerating globalization processes, intensification of cross-border relations

and unprecedented growth of intellectual property value, international cooperation on IP issues has become even more relevant.

As the world experience shows, effective socio-economic development of any modern state largely depends on the state of development and efficiency of intellectual and creative activity of its population.

The purpose of the article is a systematic study of international legal acts on the regulation of related rights in comparison with Ukrainian legislation. Based on the purpose of the study, its main objectives can be formulated: to identify the main forms of international cooperation in the field of IP protection, to analyze the treaty base of cooperation in the outlined area, to identify trends and prospects for the development of the system of international protection of IP rights, as well as to consider the path of changes in Ukrainian regulatory and creative policy over the years of its existence, and especially over the last year of fighting for victory and its right to independence!

## 2. Stages of development of rule-making for the protection of intellectual property rights in the world

In the modern world, a certain system of international legal regulation of related rights has developed, which directly affects the European related law (Anhel, 2018), since, in particular, the norms of international law form the basis of the legal system of the European Union (Yurynets, 2012), and form international, including European, standards of intellectual property rights, including copyright and related rights. Thus, the study of the legal framework of these international standards, including in the context of Ukraine's European integration aspirations, is relevant.

IP issues are widely represented in modern legal research. Thus, considering the scientific works of specialists, it is possible to note certain evolutionary steps in determining the gradual need to create a global mechanism for the protection of IPR. For example, (Peng, 2018; Fang, 2017), noted that since the twentieth century there has been a stricter need for state regulation of IPR and the development of more reliable enforcement mechanisms as a separate direction of foreign economic policy in the world. Raustiala K. considered in detail the stages of creating an international regulatory framework. Ukrainian researchers considered the legal framework in the context of harmonization of EU legislation and Ukraine's entry into the world market of intellectual resources (Gornysevich, 2011; Izbash, 2018). And modern problems of intellectual property rights protection in Ukraine (Nazarenko, Maistro, Pererva, 2020). The most pressing issues of IP

protection under martial law and reform of the legal system (Ohneviuk, 2022; Halupova, 2022).

The international copyright protection system is a complex mechanism, which is based primarily on the Berne Convention for the Protection of Literary and Artistic Works in its numerous versions and the Universal Copyright Convention of 1952, which was amended in 1971 (Berne Convention, 2003).

The international system of public administration procedures in the field of intellectual property today is based on two conventions concluded in the late XIX century: Paris Convention for the Protection of Industrial Property of 20 March 1883 (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 (Berne Convention). These two Conventions played a fundamental role in the subsequent development of legal institutions. Since then, the list of countries that have acceded to these Conventions has been constantly growing, and the legal norms proclaimed in them have become the basis for the development of national legislation (Hridochkin, 2019).

Further improvement of public administration procedures in the field of intellectual property took place after the adoption of the Conventions through their further revisions. However, the acts adopted at a later date did not change the content of the previous versions of these Conventions. In general, there is a certain coexistence of different versions of the acts, so that within both unions of states (Paris and Berne) one and the same state can be governed by the earlier version ratified by it (Ennan, 2012).

At the same time, each subsequent act is more advanced than the previous ones, in particular, regarding the general level of legal protection. The latest versions of the acts in force under both Conventions, to which most European states have acceded, are the Stockholm Act of July 14, 1967 to the Paris Convention and the Paris Act of 1971 to the Berne Convention (Hridochkin, 2019).

Numerous international conventions on public administration procedures in the field of intellectual property were also concluded within the framework of the Paris and Berne Unions. The World Intellectual Property Organization acts as a coordinator. The signed conventions can be divided into separate large groups, let us consider each of the groups in general.

I. Conventions that define the basic internationally accepted norms for the protection of intellectual property in each country.

II. Conventions that create mechanisms for acquiring rights in several or all participating countries by a single registration or by filing a single application. Such mechanisms simplify the

procedure and reduce the costs for the applicant, who no longer has to file an application separately in each country where he/she wishes to obtain protection of intellectual property rights; conventions on classifications, which are aimed at creating indexing systems to facilitate information searches on inventions, marks and industrial designs. Quite often these conventions take the form of unions. As in the case of the Paris and Berne Unions, they bring together groups of countries that may already be bound by different and successive versions of the same convention. In other cases, and this is typical for recent times, they may take the form of classical agreements.

The list of normative acts, which together with the Paris and Berne Conventions define at the international level the fundamental procedures of public administration in the field of intellectual property, includes: Madrid Agreement of 1891 on sanctions for false or misleading information concerning the place of origin of goods, Rome Convention 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Geneva Convention of 1971 for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonograms Convention), Brussels Convention of 1974 on the Distribution of Program-Carrying Signals Transmitted by Satellite (Satellite Convention), Nairobi Treaty of 1981 on the protection of the Olympic symbol, Geneva Treaty of 1989 on the International Registration of Audiovisual Works (Film Register Treaty), Geneva Treaty 1994 on the Trademark Law (TLT), Geneva Treaty 1996 on Copyright, Geneva Treaty 1996 on Performances and Phonograms and Geneva Treaty 2000 on the Patent Law (PLT).

III. The list of conventions that create an international system of public administration for filing applications or registration of intellectual property rights includes: Madrid Union of 1891, established by the Madrid Agreement Concerning the International Registration of Trademarks of 1891 and the Madrid Protocol Concerning the International Registration of Trademarks of 1989, Lisbon Union for the Protection of Appellations of Origin and their International Registration, The Hague Union for the International Registration of Industrial Designs, the International Union for the Protection of Plant Varieties (UPOV), the Washington Union (or PCT Union), the Budapest Union of 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Hridochkin, 2019).

IV. The list of conventions that establish the international classification system includes: Nice Union of 1957 concerning the International

Classification of Goods and Services for the Purposes of the Registration of Trademarks, Locarno Union of 1968 establishing the International Classification of Industrial Designs, Strasbourg Union and Vienna Union of 1973 concerning the International Classification of Figurative Elements of a Trademark.

These international joint offices, established after the adoption of the Paris and Berne Conventions, played a significant historical role until after the Second World War, when they were replaced by WIPO. It was the embryo of an international organization, which operated in the Swiss federal administration and provided management of the Paris and Berne Conventions, as well as individual treaties concluded under these two conventions. WIPO is a specialized agency of the United Nations and, first of all, an international forum where agreements concluded in the field of intellectual property are usually discussed at the world level.

The WIPO Secretariat manages the instruments in which enterprises are directly interested, such as the Madrid Union (or PCT Union), to mention only the most important ones (Fil, 2016). The organization has also established an Arbitration and Mediation Center to resolve intellectual property disputes. WIPO is a very independent organization in financial terms: contributions from member states make up only 5-6 percent of its annual income. WIPO finances its activities through fees for services provided to the private sector (Izbash, 2018).

Another organization that performs important functions of public administration in the field of intellectual property in the EU is the WTO, which was established in 1995, replacing the General Agreement on Tariffs and Trade (GATT). All EU member states and the European Community are members of the organization. The WTO has gained great importance in the field of intellectual property in connection with the adoption of the TRIPS Agreement. The reason that prompted states to choose a forum other than WIPO to negotiate these agreements was the growing dissatisfaction with the existing contrast between the precision, elegance, even sophistication of the treaty documents negotiated at WIPO (Fil S., 2016), and the lack of means to ensure the practical implementation and uniform interpretation of these treaties in different countries (Yurynets, 2012).

An annex to the Marrakesh Treaty is the TRIPS Agreement. It can be considered a set of rules that regulate the sphere of trade and investment in ideas and creativity. These rules provide for procedures and methods of intellectual property protection in the trade sphere (Khridochkin, 2018).

The WTO dispute settlement procedure is also used in the TRIPS Agreement. It is a cornerstone

of the world trade system, which guarantees the implementation of contractual provisions. And even if this system resembles court procedures, it is primarily aimed at settling disputes by mutual agreement (Izbash, 2018).

The first stage of the procedure is consultations between the parties to the dispute. The term of the consultation stage is 60 days. If the consultations do not lead to the settlement of the dispute, a special group of experts is appointed. This group is appointed by the dispute settlement body (the WTO Council, which is represented by all contracting parties). The panel works for six months and transmits its findings or recommendations to the dispute settlement body.

It should also be noted that both WIPO and WTO do not exhaust the list of international organizations that, if necessary or in accordance with their status, deal with intellectual property issues. Suffice it to recall that numerous negotiations on the conclusion of treaties in the legal field were held within the framework of the Council of Europe, as a result of which the Council of Europe also took the initiative in the field of intellectual property, as, for example, in the case of the Convention of 27 November 1963 on the Unification of Certain Elements of the Patent Law for Inventions, which paved the way for European legislation in this field, UNESCO, for its part, develops significant activities in the field of copyright in connection with its special competences in the field of culture (Hridochkin, 2019).

### **3. Identification of the main international normative documents regulating IP rights and the TRIPS Agreement in the modern world**

As already mentioned, organizations in the field of IP rights protection operate at two levels: global and regional. The main institutions dealing with IP protection on a global scale are the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Komzyuk, 2012).

Hornysevych A.M. (2011), notes that currently in the world there is a whole complex of international legal agreements of universal character relating to intellectual property. Currently, this complex includes a number of international agreements administered by UNESCO, the World Intellectual Property Organization (hereinafter – WIPO), the World Trade Organization (hereinafter – WTO).

Accordingly, it is considered that related rights at the international level are regulated by the following documents ratified by Ukraine (Yurynets, 2012):

1. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 26.10.1961.

2. Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms of 29.10.1971.

3. WIPO Performances and Phonograms Treaty (hereinafter – WPPT) of 20.12.1996.

4. Brussels Convention on the Distribution of Signals Carrying Programmes Transmitted by Satellite of 21.05.1974 (participation of the USSR since 20.01.1989).

There are a number of international treaties regulating relations in the field of intellectual property at the international level. However, the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter – TRIPS Agreement), administered by the World Trade Organization (hereinafter – WTO), plays a special role among the international standards for the legal protection of intellectual property. The TRIPS Agreement sets out the rules agreed by WTO member countries as minimum requirements for the legal protection of intellectual property. All WTO members, as well as those countries that would like to become members in the future, must comply with these rules (Nazarenko, 2020).

The provisions set out in the TRIPS Agreement largely coincide with the provisions of long-standing international treaties on the legal protection of intellectual property. For example, the provisions required by the Berne Convention for the Protection of Literary and Artistic Works (hereinafter – the Berne Convention) are included in the TRIPS Agreement and apply to the legal protection of copyrighted works.

Similarly, the TRIPS Agreement includes provisions on the legal protection of inventions and trademarks contained in the Paris Convention for the Protection of Industrial Property (hereinafter – the Paris Convention).

The TRIPS Agreement addresses five important issues: the principles of the trade system and international agreements on intellectual property, the minimum level of protection of intellectual property rights, measures to enforce these rules, the procedure for resolving disputes in the field of intellectual property, as well as transitional measures during the implementation of the systems.

The Doha program nevertheless envisages further negotiations to ensure that the protection of patents on pharmaceutical products does not impede access to medicines in poor countries and that at the same time the role of patents as an incentive for research and development in the pharmaceutical sector is preserved. At the Ministerial Conference

in Doha in November 2001, WTO Ministers adopted a special declaration stating that the TRIPS Agreement does not prevent countries from taking measures in the field of public health and using the flexibilities allowed by the TRIPS Agreement (in particular, compulsory licenses) (Izbash, 2018).

Unresolved issues include: the possibility for countries that do not have domestic production capacity for the manufacture of pharmaceutical products to import patented medicines, the layout (topography) of integrated circuits, in relation to which reference is made to the 1989 Washington Treaty (not yet in force) on Intellectual Property in relation to integrated circuits, the protection of confidential information and control of unfair competition in the field of contractual licenses.

The provisions of the third part of the TRIPS Agreement oblige the states to act in such a way that their legislation ensures the enforcement of the provisions in the field of intellectual property. To prevent infringements, legal sanctions in case of violations should be sufficiently onerous.

Procedures should be fair and should not be complicated or expensive. They should set reasonable time limits and not lead to unreasonable delays. Parties should be able to apply to the court to review an administrative decision or appeal against a lower court decision. The TRIPS Agreement describes in detail the legal procedure, including rules for obtaining testimony and evidence, provisional and protective measures, injunctions and injunctions, damages and other sanctions (Khridochkin, 2018).

The TRIPS Agreement obliges to comply with the requirements in the field of related law even those countries that are not parties to the Rome, Berne or Geneva Conventions or the WPPT. Thus, in the judgment of 26.04.2012 in case C-510/10 the Court of Justice of the European Union noted (Lex Digital Blog, 2012): "The European Union, although not a party to the Berne Convention, is nevertheless obliged to comply with its Articles 1 to 21, in accordance with Article 1(4) of the TRIPS Agreement, to which the European Union is a party." As for the role of the Berne Convention in the protection of related rights, as noted in the publication (Vallie, 2010), the Rome Convention did not recognize the personal non-property rights of performers. However, according to (Vallie, 2010), this gap before the adoption of the WPPT Treaty was filled by Art. 6 of the Berne Convention, according to which, regardless of the property rights of the author and even after the assignment of these rights, he has the right to claim recognition of his authorship of the work and to oppose any distortion, distortion or other alteration of this work, as well as any other encroachment on the work that may harm the honor or reputation of the author (Izbash, 2018).

According to (Vallie, 2010), the Berne and Geneva Conventions and the WPPT are administered by the World Intellectual Property Organization (WIPO), the Brussels Convention by UNESCO, and the Rome Convention jointly by UNESCO, WIPO and the International Labour Organization (ILO) (Article 29 of the Convention).

The first organized international response to the need to provide legal protection to the three categories of beneficiaries of related rights (performers, phonogram producers and broadcasting organizations) was the conclusion of the Rome Convention. Unlike most international conventions, which tend to synthesize the existing national legislation of many countries, the Rome Convention was an attempt to establish international legal norms in a new area for which few national laws existed at the time. Therefore, in fact, the Rome Convention largely shaped the national legislation of the countries (Yurynets, 2012).

The TRIPS Agreement (part 1-3 of Art. 14) repeats the related rights specified in the Rome Convention, and also (part 6 of Art. 14) allows the Member States to impose restrictions on the exercise of related rights provided for in the Rome Convention.

It is also very important to examine cases where international instruments allow to restrict related rights. Such restrictions are important in the context of harmonizing relations between the interests of the right holder and the interests of ensuring access to cultural property for the general public. In this sense, the Rome Convention allows (Article 15) to restrict the related rights of the subject of such rights in some special cases (use for personal purposes; use of short excerpts for the purpose of reporting current events); short-term sound recording made by a broadcasting organization on its own equipment and for its own broadcasts; use exclusively for educational or research purposes), as well as, irrespective of these cases, the same restrictions as provided for by its national legislation and regulations on the protection of copyright in works of literature and art. It should be noted once again that the right to impose restrictions on related rights is linked by the TRIPS Agreement exclusively to compliance with the requirements of the Rome Convention and does not provide for any other prohibitions on the imposition of such restrictions.

Under the TRIPS Agreement, in general, the application of the provisions of the Rome Convention is not mandatory for the countries-participants of the WPPT (unless, of course, the respective country is a party to the Rome Convention) (Yurynets, 2012).

Thus, international cooperation in the field of intellectual property is mainly regulated by the

TRIPS Agreement and agreements under the auspices of the WIPO. The TRIPS Agreement summarized and consolidated the existing documents, taking as a basis the principles of intellectual property regulation contained in these documents and focusing on the economic component of this object. In this situation, the development of science, moral aspect and advisory functions remain in the field of WIPO regulation. WIPO, established and operating as a specialized agency of the UN, was called upon to regulate intellectual property issues in the context of two opposing political systems (Michel M. Walter. 2003).

In such a balancing situation, it is difficult to ensure the imperative nature of the acts issued and related to issues far from international security problems. In the context of international economic integration, certain guarantees in the protection of intellectual property are needed.

Unlike the documents forming the WIPO, the TRIPS Agreement prescribes the parties to ensure enforcement in accordance with the standards provided by the Agreement (Izbash, 2018).

However, as practice shows, some measures of IP protection and enforcement in modern conditions may lead to violation of the right of everyone to free access to information. This concerns, first of all, the existence of IP in the Internet, which has rapidly developed and occupied a large place in the everyday life of every individual. Based on the analysis of the current trends in solving the problem of establishing a balance between the interests of right holders and Internet users at the international level, there is a clear vector towards strengthening the intellectual property regime, which may have a negative impact on freedom of information on the Internet. In this regard, it seems appropriate to adopt political documents at the international level that could restore the shaken balance.

It should be noted that in the conditions of the modern technological revolution fundamentally new possibilities of reproduction of objects protected by intellectual property rights have appeared. This leads to a significant differentiation of the structure of the intellectual property protection system and complication of the mechanisms of such protection.

Of particular importance is the protection of new technological objects, which include computer programs, biotechnology, integrated circuits, reprography (including audio and video recordings), signal distribution through new communication technology (satellites, cable), digital distribution systems. Partially these problems are already regulated by WIPO treaties and TRIPS Agreement (Izbash, 2018).

At the same time, an extremely complex set of problems has arisen related to information flows,

commercial and other activities on the Internet and the need to adapt IP protection structures to activities using the latest information technologies.

This complex goes far beyond the so-called Internet Treaties adopted in 1996. Therefore, in September 1999, WIPO adopted the so-called "Digital Agenda" – a 10-point action plan that takes into account the problems of IP protection in the context of the development of the Internet (Raustiala, 2019).

In 2020, the number of international patent applications filed under the WIPO Patent Cooperation Treaty (PCT) increased by 4% to 275900 applications, reaching an all-time high, despite a projected 3.5% decline in global GDP. China (68720 applications, + 16.1% year-on-year growth) remained the largest user of the WIPO PCT system in the world, ahead of the United States (59,230 applications, + 3%), Japan (50,520 applications, – 4.1%), the Republic of Korea (20,060 applications, + 5.2%) and Germany (18,643 applications, – 3.7%). The number of international trademark applications decreased by 0.6% in 2020 and amounted to 63800 (World Intellectual Property, 2020).

The lack of appropriate protection of property rights and the existence of infringements of intellectual property rights, causes large losses to the industry, damages the country's budget, negatively affects investments. All this contributes to the loss of the country's reputation in the global intellectual property market.

The largest number of copyright infringements is observed in the market of computer and audio products. This leads to a low level of competitiveness and innovative development of the country. In the future, measures should be taken to introduce progressive legal norms and standards in the field of legal regulation related to intellectual property.

The largest number of copyright infringements is observed in the market of computer and audio products. This leads to a low level of competitiveness and innovative development of the country. In the future, measures should be taken to introduce progressive legal norms and standards in the field of legal regulation related to intellectual property. Given the nature of the harm that can be caused when intellectual property rights infringements are left unaddressed, the TRIPS Agreement requires prompt remedies, including provisional or interim measures, without prior notice to the alleged infringer. Procedures should include guarantees that decisions will be made on the basis of evidence presented by the parties by an impartial judge who rationally applies the law.

#### 4. Implementation of international legislation regulating intellectual property rights in Ukraine

The legal system in Ukraine is based on the rule of law. According to this, the Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply

Table 1

#### International treaties of Ukraine on intellectual property issues administered by WIPO

Title of the agreement	Date of entry into force for Ukraine
Convention establishing WIPO	26.04.1970
Paris Convention for the Protection of Industrial Property	25.12.1991
Patent Cooperation Treaty	25.12.1991
Madrid Agreement Concerning the International Registration of Marks	25.12.1991
Berne Convention for the Protection of Literary and Artistic Works	25.10.1995
Treaty on the Law of Trademarks	01.08.1996
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	02.07.1997
Nairobi Treaty for the Protection of the Olympic Symbol	20.12.1998
Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms	18.02.2000
Protocol under the Madrid Agreement Concerning the International Registration of Marks	29.12.2000
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	29.12.2000
WIPO Copyright Treaty	06.03.2002
WIPO Performances and Phonograms Treaty	20.05.2002
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	12.06.2002
Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs	23.12.2003
Patent Law Treaty	28.04.2005
Locarno Agreement Establishing an International Classification for the Purposes of Industrial Designs	07.07.2009
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	29.07.2009
Strasbourg Agreement Concerning the International Patent Classification	07.04.2010
Singapore Treaty on the Law of Trademarks	24.05.2010

with it (Article 8 of the Constitution) (Hornysevych, 2011).

The basis of legal relations in the field of intellectual property is the norms of Article 54 of the Constitution of Ukraine. According to them, citizens are guaranteed freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, copyrights, moral and material interests arising in connection with various types of intellectual activity. Every citizen has the right to the results of his intellectual, creative activity; no one may use or distribute them without his consent, with the exceptions established by law.

Ukraine is a party to 20 out of 22 existing international treaties on intellectual property, administered by the World Intellectual Property Organization (WIPO). The list of these agreements is presented in Table 1.

The TRIPS Agreement entered into force on the territory of Ukraine on the date of its accession to the WTO, namely on May 16, 2008. Particular attention in the TRIPS Agreement for Ukraine is paid to the procedural standards designed to ensure prompt and effective prevention of infringements of intellectual property rights, including imports of goods that are the subject of such infringements, as well as preservation of relevant evidence of the alleged infringement.

Peculiar international standards of intellectual property rights protection can be considered the requirements of international non-governmental organizations on the protection of their intellectual property rights during the mass events organized by them, especially sports events, such as the European Football Championship 2010–2012 organized by the Union of European Football Associations (hereinafter – UEFA). It is also new for the system of international standards for the protection of intellectual property that usually the exclusive right to prohibit the unauthorized use of UEFA intellectual property is granted to the government of the country hosting the championship.

Another innovation is UEFA's requirements to prevent parasitic marketing, i.e., the use of UEFA's reputation and the championship by others for their own commercial purposes without UEFA's permission when carrying out activities in the field of marketing, advertising, public relations (Hornysevych, 2011).

In the field of reforming the legislation on intellectual property, Ukraine receives comprehensive assistance from the EU. Thus, from 2014 to 2016, the Twinning Project "Strengthening the Legal Protection and Enforcement of Intellectual Property Rights in Ukraine" was implemented by the Spanish and Danish Patent and Trademark Offices. The project is aimed at improving the

skills of specialists in the field of intellectual property (examiners of Ukrpatent, judges, customs inspectors, etc.) and harmonization of Ukrainian legislation with the European one (Nazarenko, 2020).

It should also be noted that in April 2018, Dr. R. Schmidt, an international expert of the EU Project "Support to the Development of the 192 Geographical Indications System in Ukraine", visited Ukrpatent. The main focus of the discussion was the peculiarities of the process of registration of geographical indications in Ukraine. The expert group and specialists of the examination body discussed the differences between the systems of registration of geographical indications in the EU and Ukraine (Anhel, 2018).

It also requires improvement of the intellectual property sphere of Ukraine and outlining further directions of the national registration system development.

In 2017, there were changes in the institutional capacity of the authorities in the field of intellectual property protection – the Government of Ukraine launched the reform of the system of state administration bodies in the field of intellectual property, namely, the activities of the State Intellectual Property Service, which was not sufficiently transparent, were terminated (Nazarenko, 2020).

In September 2017, work began on the creation of a single specialized judicial body – the Supreme Court on Intellectual Property, designed to improve the efficiency of the system of rights protection. Similar specialized courts exist in Germany (Federal Patent Court), Japan (Supreme Intellectual Property Court) and a number of other countries. However, the full-fledged work of the said court in Ukraine has not yet begun (Nazarenko, 2020).

5. The problems of intellectual property rights protection are related to the full-scale war in Ukraine

The open Russian attack on Ukraine began on 24.02.2022 as a full-scale war, and continues throughout 2022. The full-scale war undoubtedly affects the judicial process of the state. There were few new laws adopted in 2022. As of the beginning of February 2022, the Parliament had enough legislative ideas on intellectual property rights. For obvious reasons, the Verkhovna Rada came up with them in the summer of 2022, and some of them were rejected (for example, Draft Law No. 5552 "On Copyright and Related Rights" or No. 6464-1 "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Protection of Intellectual Property Rights"). The main government draft law No. 6464 was developed to implement the terms of the Association Agreement between Ukraine and the EU. It is now clear that further changes will be implemented on Ukraine's path to EU membership (Decree of the President of Ukraine № 64/2022 from 24/02/2022).

The Draft Law No. 6464 proposes amendments to the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, the Laws of Ukraine "On Protection of Rights to Industrial Designs", "On Protection of Rights to Trademarks for Goods and Services", "On Protection of Rights to Inventions and Utility Models", "On Protection of Rights to Semiconductor Product Layouts".

Among the proposed implementations:

- a decision to request information on the origin and distribution network of goods or services that infringe intellectual property rights;
- a one-time monetary penalty instead of using other remedies if the violation is unintentional and the application of remedies is disproportionate to the damage caused;
- an indication that the amount of compensation cannot be less than the amount of remuneration that would have been paid for granting permission to use the rights.

Back in the spring of 2022, the Verkhovna Rada adopted the Law "On the Protection of the Interests of Persons in the Field of Intellectual Property during the Martial Law Imposed in Connection with the Armed Aggression of the Russian Federation against Ukraine".

The most anticipated changes came in the fall, on November 8, 2022, the Government Order No. 943-p "Some Issues of the National Intellectual Property Authority" of October 28, 2022 came into force. According to this document, the Ukrainian National Office of Intellectual Property and Innovations becomes the entity performing the functions of the NIPA, and the state enterprise "Ukrainian Intellectual Property Institute" ceases to perform these functions" (Ukrpatent).

Currently, as of December 2022, the process of transformation and transfer of NIPA functions from Ukrpatent to National Intellectual Property Authority of Ukraine (NIPAU) is underway. Ukrpatent itself reported that from November 28, the electronic systems of filing applications for intellectual property objects, which were temporarily out of operation due to routine maintenance, should resume their work. It is quite possible that on the day when you will hold this publication in your hands, both NIPAU and Ukrpatent will work as planned. At least the prospects for the start of work of the NIPAU are more optimistic than those of the Supreme IP Court. Therefore, large and flexible changes in Ukrainian legislation are expected in the near future. The process of implementation and harmonization of legislation with the EU norms will develop especially rapidly after the victory.

The imposition of martial law by the Decree of the President of Ukraine No. 64/2022 of

February 24, 2022 provides for the restriction of constitutional rights and freedoms of a person and citizen and the rights and legitimate interests of legal entities for the period of the special legal regime in order to take the necessary measures necessary to avert the threat, repel armed aggression and ensure national security, eliminate the threat to the state independence of Ukraine, its territorial integrity. Article 55 of the Constitution of Ukraine is not included in the list of constitutional norms guaranteeing rights that are restricted during martial law. Therefore, the right of everyone to protect their rights and freedoms from violations and unlawful encroachments by any means not prohibited by law is not restricted during martial law.

According to Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law", the powers of the courts cannot be suspended, in addition, the reduction or acceleration of any form of legal proceedings is prohibited. Nevertheless, the judicial system has undergone changes under the influence of military operations – the territorial jurisdiction of court cases has been changed and the remote form of consideration of some cases has been introduced. Undoubtedly, such changes are necessary in the period of armed aggression and hostilities, because the changes are aimed at ensuring the rights of participants in court proceedings to participate in court hearings and exercise their right to a fair trial.

Taking into account the peculiarities of the current legal regime and the specifics of conflicts in the field of intellectual property, it can be stated that the change of territorial jurisdiction and remote consideration of cases cannot fully ensure effective protection of intellectual property rights.

Military actions in certain territories of the country may complicate the realization of the right to protect the results of intellectual and creative activity, so today, more than ever, the issue of using alternative dispute resolution methods and conflicts arising in the field of intellectual property rights is relevant. At present, such methods can justify the purpose of their emergence, namely, to help the judicial system to effectively protect rights.

So, consider the features of judicial protection of intellectual property rights during martial law and the peculiarities of using alternative dispute resolution methods.

In general, the imposition of martial law does not formally affect the judicial process. Article 26 of the Law of Ukraine "On the Legal Regime of Martial Law" prohibits the reduction or acceleration of any form of justice under martial law. At the same time, as practice shows, armed aggression in certain territories of the country does not allow the participants of the process to get to court. Thus,

on 24.02.2022, the Council of Judges of Ukraine adopted a decision "On Taking Urgent Measures to Ensure the Sustainable Functioning of the Judiciary in Ukraine in the Context of Termination of the HCJ Powers and Martial Law in Connection with the Armed Aggression by the Russian Federation". According to the decision of the Council, the courts will continue their work even under martial law. Also, the decision states that "in case there is a threat to the health, life and safety of visitors and court staff, the court may suspend the proceedings until the circumstances that caused the danger are eliminated." (Galupova, 2022)

In addition, judicial protection of intellectual property rights during martial law may not be effective due to the shortcomings of the judicial method of protection, among which: the duration of the court proceedings (consideration of cases in the field of intellectual property often requires the involvement of an expert who would have the necessary knowledge of the specifics of the object of intellectual property rights, and expert research takes time); financial cost of the trial; inability to be physically present at the court hearing or inability to attach the necessary evidence due to military operations in certain territories; the court decision will not satisfy both parties, and therefore, when the dispute is resolved by the court, the conflict may continue or develop into another conflict and affect a wider range of people.

Alternative dispute resolution in the field of intellectual property (ADR) is a system of ways to protect intellectual property rights based on contractual principles and aimed at resolving a dispute or settling a conflict over the rights to the results of intellectual and creative activity. In the legal literature, the methods of alternative dispute resolution include mediation, dispute settlement with the participation of a judge, negotiations, arbitration, facilitation and conclusion of a settlement agreement (Galupova, 2022). The list of ways of ADR is not exhaustive, because the development of public consciousness, on the one hand, and the development of information technology, on the other hand, make it possible to develop and expand the ADR system. These methods are universal and flexible, which makes it possible to talk about their effective and unimpeded use in martial law.

## 6. Conclusions

In modern conditions it is impossible to imagine progressive development of any sphere of human activity (culture, industry, agriculture, health care, etc.) without proper scientific and technical support and gradual spiritual development of society. These

processes are closely interrelated and, at the same time, interdependent.

Thus, at the present stage the main trends in the development of international regulation of intellectual property rights are clearly defined.

Firstly, these rights are recognized almost universally, although to varying degrees. Secondly, due to negotiations at the highest level and actions of international organizations, there is harmonization and even unification of national legislation. Thirdly, the universalization of IP protection, application of a unified approach to its provision to its citizens and foreigners, equalization of the scope of rights and opportunities for their protection in court for all interested parties is emphasized. As a result, IP protection is gradually losing its traditional territorial character.

The system of international IP rights protection seems relatively stable, but in reality this structure is subject to constant upheavals. New problems and challenges force the participants of international cooperation on IP issues to continuously review the treaty basis of their relations. This allows them to adapt national legislation to changing realities and at the same time continue their harmonization. The tendency to modernize international norms and standards, to bring these norms in line with the requirements of time complements the picture formed in the field of international regulation of IP rights.

In the EU system of law, compared to such leading branches of EU law as customs, institutional, competition law, the formation of intellectual property law as a special branch of law is still in progress. Therefore, the study of the peculiarities of public administration in the field of intellectual property in the EU countries allows to identify and outline the nearest prospects for further development of domestic public administration procedures in this area.

It should also be recognized that in Ukraine the protection of related rights is absolutized at the legislative level, although in practice the state is unable to provide generally accepted protection. Attention is drawn to the danger of absolutization of the need for intellectual property protection in Ukraine and inadequate understanding of the role of intellectual property rights for economic, social and cultural development of the country. The fact that under the guise of the fight for copyright protection there are attempts to achieve other goals, in particular, to restrict the freedom of the Internet and the media.

Absolutization of copyright and related rights protection does not automatically mean bringing such protection to international standards. Recently, in Europe and the United States there has been an understanding of the need to find a consensus

between the interests of copyright and related rights holders and the interests of society for access to cultural heritage.

It is necessary to amend the legislation of Ukraine in order to harmonize the interests of copyright and related rights holders and the interests of society for access to cultural heritage, in the context of introducing only the minimum requirements of international legal acts for the protection of copyright and related rights and simplifying access to copyright and related rights.

Unfortunately, in today's Ukraine, the protection of intellectual property remains rather conditional. Especially in the context of a full-scale military criminal attack on Ukraine by the Russian invasion

in 2022. In the near future, and especially after the victory of Ukraine, these trends will not only continue, but even intensify. International cooperation in the field of intellectual property protection will contribute to their development. However, it is itself affected by a number of positive and negative factors, the correlation of which determines the fruitfulness of joint efforts made at the international level.

At this acute stage, the state should take measures aimed at ensuring access to both judicial protection and protection of intellectual property rights by ADR methods and public awareness of the variety of ways to protect the rights to the results of intellectual and creative activity.

## References:

- Anhel, Ye. (2018). Unnecessary intellectual property: where and why is Ukraine slowing down. Available at: <https://www.eurointegration.com.ua/experts/2018/03/13/7078571/>
- Berne Convention (2003). Berne Convention for the Protection of Literary and Artistic Works. *Bulletin of International Treaties*, vol. 9.
- Borshch, V., Rudinska, O., Rogachevskyi, O., Martyniuk O., Kusykh, N., & Huz, D. (2022). Strategic Health Care Management: Challenges and Realities of Emergencies. *Economic Affairs*, vol. 67(4), pp. 851–857.
- Ennan, R. E. (2012). Legal protection of intellectual property in the European Union: prerequisites for formation, current state, development trends. *Journal of Civil Studies*, vol. 13, pp. 110–119.
- Fil, S. P. (2016). Protection of intellectual property rights at the customs border of Ukraine in the aspect of harmonization of customs legislation with the norms of the European Union. *Science and Law Enforcement*, vol. 3, pp. 292–298.
- Fang, L. (2017). Intellectual Property Rights Protection, Ownership, and Innovation: Evidence from China / L. Fang, J. Lerner, C. Wu. *The Review of Financial Studies*, vol. 30, no. 7, pp. 2446–2477. DOI: <https://doi.org/10.1093/rfs/hhx023>
- Hridochkin, A. (2019). Public administration in the field of intellectual property: the experience of the European Union.
- Hornysevyh, A. M. (2011). International standards for the protection of intellectual property rights. *Science and Innovation*, vol. 7, no. 3, pp. 49–53. Available at: [http://dspace.onua.edu.ua/bitstream/handle/11300/9802/izbash\\_o\\_o\\_mizhnarodni\\_aspekty\\_zakhystu\\_intelektualnykh\\_prav.pdf?sequence=1&isAllowed=y](http://dspace.onua.edu.ua/bitstream/handle/11300/9802/izbash_o_o_mizhnarodni_aspekty_zakhystu_intelektualnykh_prav.pdf?sequence=1&isAllowed=y)
- Galupova, L. (2022). Protection of intellectual property rights under martial law. Available at: <https://cutt.ly/c3vPqoR>
- Izbash, O. O. (2018). International aspects of intellectual rights protection. *LEX PORTUS*, vol. 2 (10). Available at: [http://dspace.onua.edu.ua/bitstream/handle/11300/9802/izbash\\_o\\_o\\_mizhnarodni\\_aspekty\\_zakhystu\\_intelektualnykh\\_prav.pdf?sequence=1&isAllowed=y](http://dspace.onua.edu.ua/bitstream/handle/11300/9802/izbash_o_o_mizhnarodni_aspekty_zakhystu_intelektualnykh_prav.pdf?sequence=1&isAllowed=y)
- Komzyuk, L. T. (2012). The main trends in the harmonization of EU copyright. *Information and Law*, vol. 1 (4), pp. 33–39.
- Michel M. Walter (2003). Relationship and comparison of the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreements). *International public and private law*, vol. 5, p. 32.
- Nazarenko, S. M., Maistro, D. S., & Pererva, P. G. (2020). Modern problems of protection of intellectual property rights in Ukraine. Available at: <https://core.ac.uk/download/pdf/162868431.pdf>
- On the introduction of martial law in Ukraine: Decree of the President of Ukraine № 64/2022 from 24/02/2022. Available at: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>
- Peculiarities of judicial proceedings under martial law. Available at: [https://jurliga.ligazakon.net/news/211140\\_osoblivost-zdysnennyasudochinstva-v-umovakh-vonnogo-stanu](https://jurliga.ligazakon.net/news/211140_osoblivost-zdysnennyasudochinstva-v-umovakh-vonnogo-stanu)
- Peng, M., Ahlstrom, D., & Carraher, S. (2017). History and the debate over intellectual property. *Management and Organization Review*, vol. 13, no. 1, pp. 15–38. DOI: <https://doi.org/10.1017/mor.2016.53>
- Project Lex Digital Blog (2012). The Court of Justice of the European Union on the powers of broadcasting organizations, on the relationship between European and national law, and principles of interpretation: Lex Digital Blog. Available at: [www.lexdigital.ru/2012/046/#more-571](http://www.lexdigital.ru/2012/046/#more-571)
- Project Lex Digital Blog. An authoritative review of the prospects for intellectual property law in the digital realm: Lex Digital Blog. Available at: [www.lexdigital.ru/2012/030/#more-406](http://www.lexdigital.ru/2012/030/#more-406)

Regarding the implementation of urgent measures to ensure the stable functioning of the judiciary in Ukraine in the conditions of the termination of the powers of the Ukrainian People's Liberation Army and martial law in connection with armed aggression on the side of the Russian Federation: decision of the Council of Judges of Ukraine No. 9 of February 24, 2022.

Raustiala, K. (2019). Intellectual Property in the Information Age: American & Chinese Perspectives. UCLA School of Law, Public Law Research Paper. No. 19-30. Available at: <https://ssrn.com/abstract=3451389>

Valle, V. (2010). The decline of James I and Queen Annie: the protection of intellectual power in the hour of space. Available at: [www.viravallee.com/books/book2.aspx](http://www.viravallee.com/books/book2.aspx)

World Intellectual Property Organization. Available at: [www.wipo.int/about-wipo/ru/history.html](http://www.wipo.int/about-wipo/ru/history.html)

Yurynets, Yu. L. (2012). The international system of regulation of related rights in the context of the European integration of Ukraine. *Information and Law*, vol. 3(6). Available at: <http://ippi.org.ua/sites/default/files/12uuleiu.pdf>

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