

The Protection of Intellectual Property under International Law

Dr. Amar Youcef Abdallah¹, Dr. Mekhaneg Abdallah²

¹Faculty of Economics Commerce and Management Sciences, Legal System Laboratory for Contracts and Transactions in Private Law, University of Djilali Bouanaama Khemis Miliana (Algeria).

²Faculty of Law and Political Sciences, Legal System Laboratory for Contracts and Transactions in Private Law, University of Djilali Bouanaama Khemis Miliana (Algeria).

The Author's E-mail: a.amar-youcef@univ-dbkm.dz¹, a.mekhaneg@univ-dbkm.dz²

Received: 06/09/2024

Published: 18/04/2025

Abstract:

The Intellectual Property legal protection underwent profound changes in the international law. The World Intellectual Property Organization concluded a wide range of international conventions, treaties, and arrangements. This article highlights the main international treaties concerning the protection of intellectual property, such as the Paris Convention for the Protection of Industrial Property (1967), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the Rome International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (1961), as well as other several agreements and recommendations. The objective of this research is to determine the contribution of such treaties to the legal protection of intellectual property rights at the global level. The international instruments recognize that intellectual property plays a significant role as an expression of creativity and wealth. We examine the impact of international treaties on the promotion and protection of intellectual property.

Keywords: Intellectual Property; Legal protection; International Treaties; Promotion; Instruments.

Introduction:

Intellectual property refers to intellectual works: inventions; literary and artistic works; designs; and emblems, names, and images used in commerce. It includes industrial property, literary and artistic property. The specific purpose of www.psychologyandeducation.net

industrial property is the protection and promotion of inventions, innovations, and creations. Intellectual property rights include the rights of authors of literary and artistic works (books and other writings, musical compositions, paintings, sculptures, computer programs, and films). The protection conferred by copyright and related rights also extends to the rights of performers (actors, singers, musicians, etc.), producers of phonograms (sound recordings) and broadcasting organizations.

The primary objective of international copyright and related rights is to encourage creativity. It also includes the protection of distinctive signs, such as trademarks (which distinguish the goods or services of one enterprise from those of others) and geographical indications (which identify a product as originating in a specific location, in cases where a specific characteristic of the product can be essentially attributed to that geographical origin).

The protection of these distinctive signs aims to promote and ensure fair competition and to protect consumers by enabling them to choose between different products and services. The scope of protection can be unlimited if the sign in question retains its distinctive character. International intellectual property protection facilitates the transfer of technology through foreign direct investment, joint ventures, and licensing. At the international level, intellectual property is protected by international treaties through patents, copyright, and trademark registrations, which allow creators to derive recognition or financial benefit from their inventions or creations. The intellectual property system aims to provide an appropriate climate conducive to the flourishing of creativity and innovation.

The World Intellectual Property Organization (WIPO) is responsible for the establishment of international rules concerning the protection of intellectual property and global services in all member countries of this organization (Madrid System for the international registration of trademarks for the international registration of patents, The Hague System for the international registration of designs, and the Lisbon System for the international registration of geographical indications).

In the present article, we discuss the following research question:

To what extent the international conventions and treaties provide an effective legal protection for intellectual property rights at the global level?

1. International Conventions and Treaties concerning Intellectual Property

The World Intellectual Property Organization is one of the 15 specialized agencies of the United Nations. Its official mission is to stimulate creativity and economic development by promoting an international intellectual property system, including by fostering cooperation among states by the establishment of treaties and conventions dealing with the protection of intellectual property.

1.1. International Conventions Dealing with Intellectual Property

An international convention is a formal binding agreement between several States or international organizations, established within the framework of international law. The main conventions on intellectual property are: the Paris Convention for the Protection of Industrial Property (1967), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (Rome Convention) (1961)¹.

1.1.1. Paris International Convention for the Protection of Industrial Property (1967)

The Paris Convention concerns industrial property in the broadest sense of the term and covers inventions, trademarks, industrial designs, utility models (as provided for by the legislation of some countries), service marks, trade names (the name under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin), and the prevention of unfair competition. The Paris Convention² concerns industrial property in the broadest sense of the term and covers inventions, trademarks, industrial designs, utility models (as provided for by the legislation of some countries), service marks, trade names (the name under which an industrial or commercial activity is carried out), geographical indications (indications of

¹ Crampes, Claude, and Langinier, Corinne "Are Intellectual Property Rights Detrimental to Innovation?" *Journal of the Economics of Business* 16(3): , 2009, p 250

² The Paris Convention, concluded in 1883, was revised in Brussels in 1900, in Washington in 1911, in The Hague in 1925, in London in 1934, in Lisbon in 1958, and in Stockholm in 1967, and was amended in 1979.

source and appellations of origin), as well as the repression of unfair competition³.

Under the provisions of domestic law, the Convention provides that each Contracting State shall grant, with respect to industrial property, the same protection to nationals of other Contracting States as to its own nationals. Nationals of States that have not acceded to the Convention also benefit from national treatment if they are domiciled in a Contracting State or have a real and effective industrial or commercial establishment there.⁴

Patents granted in different Contracting States for the same invention are independent of each other: the fact that a Contracting State grants a patent does not oblige other Contracting States to grant one; a patent may not be refused, annulled or revoked in a Contracting State because of its refusal, annulment or expiration in another Contracting State.

Anyone who has duly filed an application for a patent for an invention, a utility model, an industrial design, a trademark in one of the countries of the Union, or their successor in title, shall enjoy, for filing in other countries, a right of priority during the specified periods. The priority shall be given rise to any filing having the value of a regular national filing, under the national legislation of each country of the Union or under bilateral or multilateral treaties concluded between countries of the Union. A regular national filing shall be understood to mean any filing that is sufficient to establish the date on which the application was filed in the country in question, regardless of the subsequent outcome of that application.⁵

Consequently, a filing subsequently made in one of the other countries of the Union, before the expiry of these time limits, may not be invalidated by events occurring in the meantime, in particular, by another filing through the publication of the invention or its exploitation, by the sale of copies of the design or model, by the use of the trademark, and these events may not give rise to any third-party rights acquired before the date of the first application that

³ Deere, Carolyn ,*The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford, UK: Oxford University Press, 2009,p125

⁴ Ferrantino, Michael J., “The Effect of Intellectual Property Rights on International Trade and Investment.” *Review of World Economics* 129(2): , 1993. P 321

⁵ Art 4 of the Paris Convention for the Protection of Industrial Property, revised in 1979

serves as the basis for the right of priority shall be reserved by the effect of the domestic law of each country of the Union.

The Convention provides a priority for patents (and utility models, where applicable), trademarks, and industrial designs. This right means that, based on a first application duly filed in one of the contracting states, the applicant has a certain period of time (12 months for patents and utility models; six months for industrial designs and trademarks) to take the necessary steps to obtain protection in any of the other contracting states; therefore, these subsequent applications will be considered to have been filed on the filing date of the first application.

In other words, they will have priority over applications filed in the meantime by other persons for the same invention, utility model, trademark, or industrial design. Furthermore, since they are based on the first application, they cannot be affected by any event that may occur in the meantime, such as the publication of an invention or the sale of articles bearing the trademark or incorporating an industrial design. One of the major practical advantages of these provisions is that applicants wishing to obtain protection in several countries⁶

The introduction by the patentee into the country where the patent was granted of objects manufactured in one or other of the countries of the Union will not result in revocation. Each country of the Union will have the right to adopt legislative measures providing for the grant of compulsory licenses to prevent abuses that could result from the exercise of the exclusive right conferred by the patent, for example, failure to work. The revocation of the patent may only be provided for in cases where the grant of compulsory licenses would not have been sufficient to prevent such abuses.⁷

⁶ Frankel, Susy , “The Intellectual Property Chapter in the TPP.” In: Lim, Chin Leng; Elms, Deborah K., and Low, Patrick (Eds.), *The Trans-Pacific Partnership: A Quest for a Twenty-First Century Trade Agreement*. Cambridge, UK: Cambridge University Press, 2012,p 161

⁷ The Paris Union, established by the Convention, has an Assembly and an Executive Committee. Each State that is a member of the Union and that has adhered to at least the administrative provisions and final clauses of the Stockholm Act (1967) is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is an ex officio member. The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Paris Union is concerned – is the responsibility of the Union Assembly. 7. Article 5 of the Paris Convention for the Protection of Industrial Property, revised in 1979

No action for forfeiture or revocation of a patent may be brought before the expiration of two years from the grant of the first compulsory license. A compulsory license may not be requested on the grounds of failure or insufficiency of working before the expiration of a period of four years from the filing of the patent application, or three years from the grant of the patent, whichever period expires later; it shall be refused if the patentee justifies his inaction by legitimate excuses. Such a compulsory license shall be non-exclusive and may only be transferred, even in the form of a sublicense, with the part of the undertaking or business exploiting this license. The protection of industrial designs may not be affected by any forfeiture, either for failure to work or for the introduction of objects conforming to those protected.⁸

The conditions for filing and registering trademarks shall be determined in each country of the Union by its national legislation. However, a trademark filed by a national of a Union country may not be refused or invalidated on the grounds that it has not been filed, registered, or renewed in the country of origin.⁹

1.1.2. Rome International Convention for the Protection of Performers, Producers of Phonograms (1961)

The Rome Convention protects the performances of performers, the phonograms of producers of phonograms, and the broadcasts of broadcasting organizations. Performers (actors, singers, musicians, dancers and persons who perform literary or artistic works) are protected against certain acts for which they have not given their authorization, such as: the broadcasting or communication to the public of a live performance; the fixation in a tangible medium of the live performance; the reproduction of such a fixation if it was originally made without the consent of the performer or if the reproduction was made for purposes other than those for which they had given their consent.¹⁰

In the Rome Convention, “phonograms” are defined as any exclusively fixation of the sounds of a performance or of other sounds. When a commercially

⁸ Art 6 of the Paris Convention for the Protection of Industrial Property, revised in 1979

⁹ Gamso, Jonas, and Grosse, Robert. “Trade Agreement Depth, Foreign Direct Investment, and the Moderating Role of Property Rights.” *Journal of International Business Policy* 3(4): , 2020,p311

¹⁰ Gleeson, Deborah; Lexchin, Joel; Lopert, Ruth, and Kilic, Burcu “The Trans Pacific Partnership Agreement, Intellectual Property and Medicines: Differential Outcomes for Developed and Developing Countries.” *Global Social Policy* 18(1);, 2018, p12

published phonogram is subject to secondary uses (i.e., is broadcast or otherwise communicated to the public), a remuneration or equitable royalty must be paid by the user to the performers or the producer of the phonogram, or to both; however, Contracting States may not apply this rule or limit its application.¹¹

Each Contracting State shall grant national treatment to producers of phonograms whenever one of the following conditions is met: the producer of phonograms is a national of another Contracting State (nationality criterion). Where the first publication has taken place in a non-Contracting State but the phonogram has also been published, within thirty days of the first publication, in a Contracting State (simultaneous publication), the phonogram shall be considered to have been published for the first time in the Contracting State. Any Contracting State may, by notification deposited with the Secretary-General of the United Nations, declare that it will not apply either the publication criterion or the fixation criterion. This notification may be deposited at the time of ratification, acceptance or accession, or at any other time; in the latter case, it shall take effect only six months after its deposit.¹²

Each Contracting State shall accord national treatment to broadcasting organizations whenever one of the following conditions is fulfilled: the head office of the broadcasting organization is situated in another Contracting State; the broadcast was broadcast by a transmitter located in the territory of another Contracting State. Any Contracting State may, by a notification deposited with the Secretary-General of the United Nations, declare that it will grant protection to broadcasts only if the head office of the broadcasting organization is situated in another Contracting State and the broadcast was broadcast by a transmitter located in the territory of the same Contracting State.

This notification may be made at the time of ratification, acceptance or accession, or at any other time; in the latter case, it shall take effect only six months after its deposit. The protection provided by this Convention for performers shall prevent the broadcasting and communication to the public of their performance without their consent, except where the performance used for broadcasting or communication to the public is itself already a broadcast

¹¹ Grossman, Gene M., and Lai, Edwin L.C. "International Protection of Intellectual Property." *American Economic Review* 94(5):, 2004.p 1638

¹² Art 6 of Rome International Convention for the Protection of Performers, Producers of Phonograms (1961)
www.psychologyandeducation.net

performance or is made from a fixation without their consent in a tangible medium of their unfixed performance.

It shall be for the national legislation of the Contracting State in whose territory protection is sought to provide protection against rebroadcasting, fixation for broadcasting purposes and the reproduction of such a fixation for broadcasting purposes, where the performer has consented to the broadcasting. The terms of use by broadcasting organizations of fixations made for broadcasts shall be governed by the national legislation of the Contracting State in whose territory protection is sought. However, the national legislation

shall not have the effect of depriving performers of the ability to regulate, by contract, their relations with broadcasting organizations.¹³

The Contracting State requires, under its national law, the completion of formalities as a condition for the protection, in respect of phonograms, of the rights of producers of phonograms or of performers, or of both, these requirements shall be considered to be satisfied if all copies in commerce of the published phonogram, or the case containing it, bear a notice consisting of the symbol (P) accompanied by an indication of the year of first publication, affixed in a manner which clearly shows that protection is reserved.

Furthermore, if the copies or their packaging do not allow the producer of the phonogram or the holder of the license granted by the producer to be identified (by means of the name, trademark or any other appropriate designation), the notice must also include the name of the owner of the rights of the producer of the phonogram. Finally, if the copies or their packaging do not allow the principal performers to be identified, the notice must also include the name of the person who, in the country where the fixation took place, holds the rights of these performers¹⁴.

Any Contracting State may provide in its national legislation for exceptions to the protection guaranteed by this Convention in the following cases: when the use is for private purposes; or when short excerpts are used in the reporting of a current event. Without prejudice to the provisions of the convention, any Contracting State may provide in its national law, with regard to the protection

¹³ *Ibid.*, Art 11.

¹⁴ Art 17 of Rome International Convention for the Protection of Performers, Producers of Phonograms (1961)
www.psychologyandeducation.net

of performers, producers of phonograms and broadcasting organizations, for limitations of the same nature as those provided for in that law with regard to the protection of copyright in literary and artistic works. However, compulsory licenses may be established only to the extent that they are compatible with the provisions of this Convention¹⁵.

Any State whose national law, in force on 26 October 1961, grants producers of phonograms protection based solely on the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the same time as its instrument of ratification, acceptance or accession, declare that it will apply only that criterion of fixation for the purposes of Article 5, and that same criterion of fixation instead of the criterion of the nationality of the producer. This Convention shall not affect rights acquired in any Contracting State prior to the date of entry into force of the Convention for that State¹⁶.

No Contracting State shall be required to apply the provisions of this Convention to performances, broadcasts, or phonograms recorded prior to the date of entry into force of the Convention for that State¹⁷.

Contracting States reserve the right to enter into special arrangements among themselves, provided that such arrangements confer on performers, producers of phonograms, or broadcasting organizations more extensive rights than those granted by this Convention or contain other provisions not inconsistent with this Convention.¹⁸

1.2. International Treaties Concerning Intellectual Property

In international law, a treaty is a formal agreement that governs international relations. To conclude a treaty, one must be a subject of international law (State or international organization). States commit to all or part of a treaty. International treaties for the protection of intellectual property are concluded under the auspices of the World Intellectual Property Organization (WIPO), the

¹⁵ *Ibid.*, Art 20.

¹⁶ *Ibid.*, Art 22.

¹⁷ Hanel, Petr "Intellectual Property Rights Business Management Practices: A Survey of the Literature." *Technovation* 26(8):, 2006,p. 897

¹⁸ Helfer, Laurence R. "Regime Shifting in the International Intellectual Property System." *Perspectives on Politics* 7(1): , 2009,p 43

United Nations agency serving innovators and creators worldwide, ensuring that their ideas reach the marketplace safely and improve the lives of everyone, everywhere.

1.2.1. The WIPO Copyright Treaty (1996)

The Contracting Parties, Desiring to develop and ensure the protection of the rights of authors in their literary and artistic works as effectively and uniformly as possible, recognizing the need to establish new international rules and to clarify the interpretation of certain existing rules in order to provide appropriate responses to questions raised by developments in the economic, social, cultural, and technological fields.

The 1996 Copyright Treaty (WCT) constitutes a special arrangement according to Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, with respect to Contracting Parties that are member countries of the Union established by that Convention. It has no connection with any treaties other than the Berne Convention and applies without prejudice to the rights and obligations arising under any other treaty. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.¹⁹ Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such²⁰.

Compilations of data or other material, in whatever form, which, by the selection or arrangement of the contents, constitute intellectual creations shall be protected as such. This protection does not extend to the data or material themselves and is without prejudice to any copyright subsisting in the data or material contained in the compilation²¹. Authors of literary and artistic works shall enjoy the exclusive right to authorize the making available to the public of the original and copies of their works through sale or other transfer of ownership. Nothing in this Treaty shall prejudice the ability of Contracting Parties to determine the conditions, if any, under which the exhaustion of the

¹⁹ The Copyright Treaty (WCT) refers to the Berne Convention and the Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works.

²⁰ Art 2 of the Copyright Treaty (1996)

²¹ *Ibid.*, Art 5.

right applies after the first sale or other transfer of ownership of the original or a copy of the work, made with the authorization of the author²².

Contracting Parties may provide in their legislation for limitations or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases where such limitations or exceptions do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. In applying the Berne Convention, Contracting Parties shall restrict any limitations or exceptions to the rights provided for in that Convention to certain special cases where such limitations or exceptions do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author²³.

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures used by authors in the exercise of their rights under this Treaty or the Berne Convention and which restrict acts with respect to their works that are not authorized by the authors concerned²⁴.

Contracting Parties shall provide for adequate and effective legal remedies against any person who does any of the following acts knowingly, or, with respect to civil remedies, having reasonable grounds to believe, that such acts will cause, enable, facilitate or conceal an infringement of a right provided for under this Treaty or the Berne Convention: removing or altering, without authority, any rights management information in electronic form; or distributing, importing for distribution, broadcasting or communicating to the public, without authority, works or copies of works with the knowledge that rights management information in electronic form has been removed or altered without authorization²⁵.

Contracting Parties undertake to adopt, in accordance with their legal systems, the necessary measures to ensure the implementation of this Treaty. They shall ensure that their laws contain procedures for the enforcement of the rights provided for in this Treaty so as to permit effective action against any act of

²² Art 6 of the Copyright Treaty (1996)

²³ *Ibid.*, Art 10.

²⁴ *Ibid.*, Art 11.

²⁵ *Ibid.*, Art 12.

infringement of these rights, including measures to prevent prompt infringement and measures to prevent further infringement²⁶.

Each Contracting Party shall be represented by a delegate, who may be assisted by alternates, advisers, and experts. The expenses of each delegation shall be borne by the Contracting Party that designated it. The Assembly may request the World Intellectual Property Organization to provide financial assistance to facilitate the participation of delegations from Contracting Parties that are considered developing countries in accordance with the established practice of the United Nations General Assembly or that are countries in transition to a market economy²⁷.

1.2.2. Singapore Treaty on the Law of Trademarks (2006)

Any Contracting Party may require that any communication be in a language accepted by the Office. Where the Office accepts more than one language, the applicant, holder, or other interested person may be required to comply with any other applicable language requirements in relation to the Office, provided that no indication or element of the communication may be required to be in more than one language.

No Contracting Party may require that a translation of a communication be attested, recognized by a public official, authenticated, legalized, or otherwise certified, except as otherwise provided in this Treaty. Where a Contracting Party does not require that a communication be in a language accepted by its Office may require that a translation of that communication into a language accepted by it, prepared by a sworn translator or by an agent, be furnished within a reasonable time limit. Any Contracting Party may require that a communication on paper be signed by the applicant, owner or other interested person. Where a Contracting Party requires that a communication on paper be signed, it shall accept any signature fulfilling the requirements prescribed in the Regulations. No Contracting Party may require that a signature be attested, acknowledged by a public officer, authenticated, legalized or otherwise certified, except where the

²⁶ *Ibid.*, Art 10.

²⁷ Art15 of the Copyright Treaty (1996)
www.psychologyandeducation.net

law of the Contracting Party provides otherwise in the case where the signature relates to the renunciation of a registration²⁸.

Every registration and publication made by an Office concerning an application or registration and indicating goods or services shall mention those goods or services by name, grouped according to the classes of the Nice Classification, each group of goods or services being preceded by the number of the class of that Classification to which it belongs and being presented in the order of the classes of that Classification. Goods or services may not be considered similar on the ground that, in a registration or publication of the Office, they appear in the same class of the Nice Classification. Goods or services may not be considered dissimilar on the ground that, in a registration or publication of the Office, they appear in different classes of the Nice Classification²⁹.

In the event of a change in the identity of the owner, each Contracting Party shall accept that the request for the Office to record the change in its Register of Marks be submitted by the owner or the person who has become the owner in a communication indicating the number of the registration concerned and the change to be recorded. Where the change in ownership results from a contract, any Contracting Party may require the following documents: a copy of the contract; this copy may be required to be certified as a true copy of the original by a public officer or other competent public authority; an extract from the contract establishing the change in ownership; this extract may be required to be certified as a true copy of the original by a public officer or other competent public authority³⁰.

The failure to record a license with the office or any other authority of the Contracting Party shall not affect the validity of the registration of the trademark that is the subject of the license or the protection of that trademark or certain rights of the licensee. A Contracting Party may intervene in infringement proceedings brought by the holder or to obtain, in such proceedings, damages resulting from infringement of the trademark that is the subject of the license use of a trademark when the license is not recorded. A Contracting Party may not require the registration of a license as a condition for the use of a trademark by a

²⁸ Art 8 of the Singapore Treaty on the Law of Trademarks(2006)

²⁹ *Ibid.*, Art 9.

³⁰ Art 11 of the Singapore Treaty on the Law of Trademarks (2006)

licensee to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance, and enforcement of trademarks³¹.

The International Bureau shall carry out administrative tasks relating to this Treaty. The Director General shall convene any committee or working group established by the Assembly.

The persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly and of any committees and working groups established by the Assembly. The Director General or a member of staff designated by the Director General shall be ex officio secretary of the Assembly and of the relevant committees and working groups. The International Bureau, in accordance with the directives of the Assembly, shall prepare the revision conferences. The International Bureau may consult with member States of the Organization, intergovernmental organizations, and international and national non-governmental organizations on the preparation of these conferences³².

2. Agreements and Recommendations Concerning Intellectual Property

The Agreements and Recommendations concerning industrial property in the broadest sense of the term cover patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications, and the repression of unfair competition.

2.1. Agreements involving Intellectual Property

The designation of a given Contracting Party shall be made either under the Agreement or under the Protocol, depending on the treaty common to the Contracting Party concerned and the Contracting Party whose Office is the Office of origin. If both Contracting Parties are bound by both the Agreement and the Protocol, the designation is governed by the Protocol.

2.1. 1. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)

³¹ *Ibid.*, Art 24.

³² The International Bureau prepares the meetings and provides secretariat services to the Assembly and to any committees of experts and working groups it may establish

The countries to which the Vienna Agreement on the Figurative Elements of Marks applies³³ constitute a Special Union and adopt a common classification for the figurative elements of marks. The classification of figurative elements consists of a list of categories, divisions, and sections in which the figurative elements of marks are classified, accompanied, where appropriate, by explanatory notes. This classification is contained in an authentic copy, in the English and French languages, signed by the Director General of the World Intellectual Property Organization and deposited with him at the time this Agreement is opened for signature³⁴

The classification of figurative elements is established in the English and French languages, both texts being equally authentic. The International Bureau of the Organization shall, in consultation with the governments concerned, establish official texts of the classification of figurative elements in the languages adopted by the Assembly³⁵.

According to this Agreement, the scope of the classification of figurative elements shall be assigned by each country of the Special Union. In particular, the classification of figurative elements shall not bind the countries of the Special Union as to the extent of protection of the mark. The competent authorities of the countries of the Special Union shall have the option of applying the classification of figurative elements as a principal or auxiliary system. These authorities shall include, in the official titles and publications of trademark registrations and renewals, the numbers of the categories, divisions, and sections in which the figurative elements of such marks are to be classified³⁶.

A Committee of Experts shall be established in which each of the countries of the Special Union shall be represented. The Director General may, and, at the request of the Committee of Experts, shall invite countries not members of the Special Union which are members of the Organization or parties to the Paris Convention for the Protection of Industrial Property to be represented by

³³ The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, adopted in Vienna on 12 June 1973 and amended on 1 October 1985

³⁴ Art 2 of the Vienna Agreement on the Figurative Elements of Marks (1973)

³⁵ *Ibid.*, Art 3.

³⁶ *Ibid.*, Art 4.

observers at meetings of the Committee of Experts. The Director General shall invite intergovernmental organizations specializing in the field of trademarks; at least one of whose member countries is a party to this Agreement, to be represented by observers at meetings of the Committee of Experts. The Director General may, and, at the request of the Committee of Experts, must invite representatives of other intergovernmental and international non-governmental organizations to take part in discussions of interest to them³⁷.

All decisions of the Committee of Experts relating to amendments or additions to the Classification of Figurative Elements, as well as the recommendations of the Committee of Experts, shall be notified by the International Bureau to the competent administrations of the countries of the Special Union. Amendments and additions shall enter into force six months after the date of dispatch of the notifications. The International Bureau shall incorporate into the Classification of Figurative Elements the amendments and additions that have entered into force. Amendments and additions shall be the subject of notices published in the periodicals designated by the Assembly concerned³⁸.

The budget of the Special Union shall include the income and expenditure specific to the Special Union, its contribution to the budget of expenses common to the Unions administered by the Organization, and, where applicable, the amount made available for the budget of the Conference of the Organization. Expenses common to the Unions administered by the Organization shall be considered to be expenses which are not allocated exclusively to the Special Union but also to one or more other Unions. The share of the Special Union in these common expenses shall be proportional to the interest which these expenses present for it. The budget of the Special Union shall be determined taking into account the requirements of coordination with the budgets of the other Unions administered by the Organization³⁹.

Any amendment to the previous articles shall be binding on all the countries which are members of the Special Union at the time the amendment comes into force; however, any amendment which increases the financial obligations of the

³⁷ Art 5 of the Vienna Agreement on the Figurative Elements of Marks (1973)

³⁸ *Ibid.*, Art 6.

³⁹ *Ibid.*, Art 9.

countries of the Special Union shall not only those which have notified their acceptance of the said amendment⁴⁰.

2.1.2. Strasbourg Agreement concerning the international patent classification (1971).

The countries to which the Strasbourg Patent Agreements⁴¹ apply constitute a Special Union and adopt a common classification, called the International Patent Classification, for invention certificates, utility models and utility certificates⁴².

The International Bureau of the Organization shall, in consultation with the interested governments, either on the basis of a translation proposed by those governments or by any other means which would have no financial implications for the budget of the Special Union or for the Organization, establish official texts of the Classification in German, Japanese, Portuguese, Russian and such other languages as the Assembly concerned may designate⁴³.

A Committee of Experts shall be established in which each of the countries of the Special Union shall be represented. The Director General shall invite intergovernmental organizations specializing in the field of patents; at least one of whose member countries is a party to this Agreement, to be represented by observers at meetings of the Committee of Experts. The Director General may, and, at the request of the Committee of Experts, shall invite representatives of other intergovernmental and international non-governmental organizations to take part in discussions of interest to them⁴⁴.

All decisions of the Committee of Experts relating to amendments to the Classification, as well as the recommendations of the Committee of Experts, shall be notified by the International Bureau to the competent authorities of the countries of the Special Union. Amendments shall enter into force six months after the date on which the notifications were sent. The International Bureau shall incorporate into the Classification the amendments which have entered into

⁴⁰ *Ibid.*, Art 11.

⁴¹ The Strasbourg Patent Agreement of 1971 was amended on September 28, 1979

⁴² Art 1 of the Strasbourg Patent Agreement of (1971)

⁴³ *Ibid.*, Art 3.

⁴⁴ *Ibid.*, Art 5.

force. Amendments shall be subject to notices published in the periodicals designated by the Assembly⁴⁵.

The budget of the Special Union shall include the revenue and expenditure specific to the Special Union, its contribution to the budget of expenditures common to the Unions, and, where applicable, the sum made available for the budget of the Conference of the Organization. Expenditures common to the Unions shall be considered to be those expenses which are not allocated exclusively to the Special Union but also to one or more other Unions administered by the Organization. The Special Union's share in these common expenses shall be proportional to the interest these expenses represent for it. The budget of the Union The specific budget is determined taking into account the requirements of coordination with the budgets of the other Unions administered by the Organization⁴⁶.

2.2. Joint Recommendations concerning intellectual property

WIPO standards are presented in the form of recommendations addressed to States and international organizations, in particular their national and regional intellectual property offices, the International Bureau of WIPO, and any other national or international body dealing with matters relating to intellectual property documentation and information.

2.2.1. Joint Recommendation Concerning Trademark Licenses by WIPO (2000)

The Joint Recommendation on the Protection of Trademarks⁴⁷ states that The use of a sign on the Internet is assimilated to the use of that sign in a Member

⁴⁵ *Ibid.*, Art 6.

⁴⁶ Art 9 of the Strasbourg Patent Agreement (1971)

⁴⁷ Joint Recommendation on the Protection of Trademarks adopted by the Assembly of the Paris Union for the Protection of Industrial Property in 2001

State for the purposes of these provisions, provided that such use has commercial effects in that State under the conditions indicated⁴⁸.

To determine whether the use of a sign on the Internet has commercial effects in a Member State, the competent authority shall take into consideration all relevant factors. It may take into account, in particular, but not exclusively, evidence that the user of the sign is carrying on or has undertaken serious preparations to carry on business in that Member State in goods or services that are identical or similar to those for which the sign is used on the internet; whether the user actually provides a service to consumers in that State or maintains relations of a commercial nature with persons in that State; and whether the user has indicated, in a statement associated with the use of the sign on the internet, that he does not intend to supply the goods or services in question to consumers in that State, and whether he has complied with his statement of intention⁴⁹

For the purposes of applying these provisions, in determining whether a sign has been used in bad faith or whether a right has been acquired in bad faith, all relevant evidence shall be taken into account. whether the person who used the sign or acquired the right could not normally be unaware of the existence of a right in an identical or similar sign belonging to another person at the time he first used the sign, acquired the right in it or filed an application to acquire that right, whichever was the earlier, and whether the use of the sign would take unfair advantage of, or unjustifiably impair, the distinctive character or reputation of the sign to which the other right is attached⁵⁰.

The use of a sign on the internet in a Member State, including forms of use made possible by technological progress, shall in any event be taken into account when determining whether the conditions for acquiring or maintaining in force a right in the sign provided for by the applicable law of that State have been met⁵¹. The use of a sign on the internet, including forms of use made possible by technological progress, shall be taken into account when determining whether a right recognized under the applicable law of a Member State has been infringed or whether the use amounts to an act of unfair

⁴⁸ . Art 2 of the 2001 Joint Recommendation on the Protection of Trademarks (2011)

⁴⁹ *Ibid.*, Art 3.

⁵⁰ Art 4 of the 2001 Joint Recommendation on the Protection of Trademarks (2011)

⁵¹ *Ibid.*, Art 5.

competition under the law of that State, provided that such use constitutes use of the sign on the internet in such State⁵².

If it is alleged that the use of a sign on the internet in a Member State infringes a right in that Member State, the user of that sign shall not be held liable for that infringement until it has been notified to him if the user is the holder of a right. on the sign in another Member State or uses the sign with the authorization of the holder of that right or is authorized to use the sign, in the manner in which it is used on the Internet, under the law of another Member State with which that user is closely connected; if the user has provided, in connection with the use of the sign on the Internet, sufficient information to allow him to be contacted by post, email, or fax⁵³.

Member States agree to consider, in particular, a disclaimer issued by a user as a reasonable and effective measure. The disclaimer shall include a clear and unequivocal statement, associated with the use of the sign, stating that the user has no relationship with the holder of the right that has allegedly been infringed and does not intend to supply the goods or services to consumers in a specific Member State where the right is protected. The disclaimer shall be written in the language or languages used in connection with the use of the sign on the Internet; the user asks, before the supply of the goods or services, whether the consumers are located in the Member State referred to in point (i); and the user actually refuses to supply to consumers who have indicated that they are located in that Member State⁵⁴.

The sanctions provided for in the event of infringement of rights or acts of unfair competition in a Member State, resulting from the use of a sign on the Internet in that State, shall be proportionate to the commercial impact of such use in the State in question. The competent authority shall evaluate the interests and rights at stake and the circumstances of the case. The user of the sign shall, upon request, have the opportunity to propose an effective sanction to the competent authority, before a decision on the substance of the case⁵⁵.

⁵² *Ibid.*, Art 6.

⁵³ *Ibid.*, Art 9.

⁵⁴ *Ibid.*, Art 12.

⁵⁵ . Art 13 of the 2001 Joint Recommendation on the Protection of Trademarks (2011)

2.2.2. Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999)

The Recommendation on the Protection of Well-Known Marks⁵⁶ is the first initiative of WIPO's policy of adapting the field of industrial property by considering new solutions to accelerate the development of common, internationally harmonized principles. The need to approach the progressive development of international intellectual property law differently⁵⁷

In determining whether a mark is well-known, the competent authority shall take into consideration any circumstances from which reputation may be inferred. In particular, the competent authority shall consider the information provided to it concerning factors from which it may be inferred that the mark is or is not well-known, including, but not limited to, information concerning: the degree of knowledge or recognition of the mark within the relevant sector of the public; the duration, extent, and geographical area of any use of the mark; the duration, extent, and geographical area of any promotion of the mark, including advertising and presentation at fairs or exhibitions of the goods or services to which the mark applies⁵⁸.

Member States shall protect well-known marks against conflicting trademarks, distinctive business signs, or domain names, at least from the time they become well-known in the Member State concerned. Bad faith, among other factors, may be taken into account in assessing conflicting interests when applying Part II of these provisions⁵⁹.

A trademark is considered to be in conflict with a well-known trademark when that trademark or one of its essential elements constitutes a reproduction, imitation, translation, or transliteration, likely to cause confusion, of the well-known trademark or being subject of an application for registration, or is registered for goods or services that are identical or similar to the goods or

⁵⁶ The Joint Recommendation concerning the provisions relating to the protection of well-known trademarks, which contains the text of the provisions adopted by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) during the second part of its second session (7-11 June 1999), was adopted at a joint meeting of the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) during the thirty-fourth series of meetings of the Assemblies of the Member States of WIPO (20-29 September 1999).

⁵⁷ Preamble to the Joint Recommendation on the Protection of Well-Known Trademarks (1999)

⁵⁸ Art 2 of the Joint Recommendation on the Protection of Well-Known Trademarks (1999)

⁵⁹ *Ibid.*, Art 3.

services to which the well-known trademark applies. Regardless of the goods or services for which it is used, or for which it is the subject of an application for registration, or is registered, a trademark is considered to be in conflict with a well-known trademark when that trademark or one of its essential elements constitutes a reproduction, imitation, translation, or transliteration of the well-known trademark and at least one of the following conditions is met⁶⁰.

A distinctive business sign is considered to be in conflict with a well-known trademark when that sign or one of its essential elements constitutes a reproduction, imitation, translation, or transliteration of the well-known trademark and that at least one of the following conditions is met: the use of the distinctive business sign would indicate a link between the business for which it is used and the owner of the well-known trademark, and would be likely to harm the interests of the latter; the use of the distinctive business sign is likely to harm the distinctive character of the well-known trademark. The use of the distinctive corporate sign would take unfair advantage of the distinctive character of the well-known trademark⁶¹.

A domain name is considered to be in conflict with a well-known trademark at least when the domain name, or one of its essential elements, constitutes a reproduction, imitation, translation, or transliteration of the well-known trademark and was registered or used in bad faith. The owner of the well-known trademark is entitled to request, by decision of the competent authority, that the holder of the conflicting domain name cancel the domain name registration or transfer it to the owner of the well-known trademark⁶².

Conclusion:

Intellectual property is a crucial issue for business matters. We have discussed in this article the different types of intellectual property and how to protect them in international law. Industrial property applies to all industrial creations and gives rise to four forms of protection: patents, trademark protection, industrial design protection, and protection of geographical indications of origin and controlled

⁶⁰ Art 3 of the Joint Recommendation on the Protection of Well-Known Trademarks (1999)

⁶¹ *Ibid.*, Art 5.

⁶² *Ibid.*, Art 6.

designations of origin. A coherent strategy between trademarks and domain names strengthens the overall protection of a company's online identity.

Intellectual property rights protect not only a company's ideas or concepts but also the business assets that are essential to its products and services. Thus, the benefits of international intellectual property protection are numerous and include:

- Intellectual property rights can help create opportunities through licensing, sales, and even marketing of protected products and services. This will improve market share and increase profits. Having registered and protected intellectual property rights can also increase a company's value in the event of a sale, merger, or acquisition.
- Transforming ideas or thoughts into profitable assets as registering ideas under intellectual property rights can help you transform them into commercially profitable products and services. Registering copyrights or licensing patents can generate a steady stream of royalties and additional income.
- Marketing products and services to obtain intellectual property rights can enhance company's image. Intellectual property rights, such as trademark registration, can help you distinguish your products and services from those of others.
- Accessing capital or raising funds through sales, licensing, or as collateral for debt financing, an individual can monetize them. Intellectual property rights can be used as an advantage when applying for government funding such as grants or loans.
- Improve export opportunities because registered business will be able to use trademarks and designs to market its products and services in other markets as well. A business can also take advantage of franchise agreements with foreign companies or export patented products.
- Human progress and well-being depend on its ability to create and invent in the fields of technology and culture.

The intellectual property is valuable and must be protected for several reasons:

- Honoring the time and money invested in the business creation project by protecting it from competition;
- Preventing the copying of your intellectual creations (products, services, methods, etc.) by competitors and thus maintain your competitive advantage;
- Simplifying legal proceedings in the event of a dispute concerning your company's (or another company's) intellectual property;
- Increasing the value of r business by protecting intellectual property. This will make the company more attractive to potential customers and investors.
- encouraging Legal protection of new creations of additional resources to innovation.
- Promoting and protecting intellectual property stimulates economic growth, creates new jobs and new industries, and improves the quality of life.
- protecting intellectual property allows, in particular, action against counterfeiters and unfair practices..

Undoubtedly, holding intellectual property rights is one of the considerations taken into account by investors. Conversely, relevant but unprotected technology causes a company to lose value. Legal protection of intellectual property at the international level requires the adoption of the following recommendations:

- Identifying the information to be protected
- Implementing physical and security measures
- Using confidentiality agreements with partners
- . Choosing the classes of goods and services to be protected
- Registering the trademark
- Implementing monitoring of registrations of similar domain names
- Drafting clear assignment or license agreements
- Preparing graphic representations of the design

- Choosing the products to which the design applies
- Protecting creations generated by artificial intelligence
- Managing rights in the world of digital assets
- Adapting copyright law to the era of big data and text and data mining
- Integration of the company's innovation strategy

This holistic approach not only effectively protects the intellectual property rights and creations, but also optimizes their exploitation and economic development.

Ultimately, protecting intellectual property is a major strategic issue in international law. It requires a proactive approach, constant monitoring, and continuous adaptation to technological and legal developments. By implementing a comprehensive and coherent legal strategy. Creators and companies can not only secure their intangible assets, but also turn them into a real driver of growth and innovation.

Bibliography:

International treaties and conventions

Rome International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (1961)

Paris Convention for the Protection of Industrial Property (1967)

Berne Convention for the Protection of Literary and Artistic Works (1971)

Strasbourg Agreement concerning the international patent classification (1971).

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)

The WIPO Copyright Treaty (1996)

Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999)

Singapore Treaty on the Law of Trademarks (2006)

Joint Recommendation Concerning Trademark Licenses by WIPO (2000)

Books and articles

Connolly, Michelle, and Valderrama, Diego ,“Implications of Intellectual Property Rights for Dynamic Gains from Trade.” *American Economic Review* 95(2): 318–322, 2005.

Crampes, Claude, and Langinier, Corinne ,“Are Intellectual Property Rights Detrimental to Innovation?” *Journal of the Economics of Business* 16(3): 249–268, 2009.

Deere, Carolyn ,*The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford, UK: Oxford University Press, 2009.

Ferrantino, Michael J. ,“The Effect of Intellectual Property Rights on International Trade and Investment.” *Review of World Economics* 129(2): 300–331, 1993.

Frankel, Susy ,“The Intellectual Property Chapter in the TPP.” In: Lim, Chin Leng; Elms, Deborah K., and Low, Patrick (Eds.), *The Trans-Pacific Partnership: A Quest for a Twenty-First Century Trade Agreement*. Cambridge, UK: Cambridge University Press. 157–170, 2012.

Gamso, Jonas, and Grosse, Robert ,“Trade Agreement Depth, Foreign Direct Investment, and the Moderating Role of Property Rights.” *Journal of International Business Policy* 3(4): 308–325, 2020.

Ginarte, Juan C., and Park, Walter G., “Determinants of Patent Rights: A Cross-National Study.” *Research Policy* 26(3): 283–301, 1997.

Gleeson, Deborah; Lexchin, Joel; Lopert, Ruth, and Kilic, Burcu ,“The Trans Pacific Partnership Agreement, Intellectual Property and Medicines: Differential Outcomes for Developed and Developing Countries.” *Global Social Policy* 18(1): 7–27, 2018.

Grossman, Gene M., and Lai, Edwin L.C., “International Protection of Intellectual Property.” *American Economic Review* 94(5): 1635–1653, 2004.

Hanel, Petr;. “Intellectual Property Rights Business Management Practices: A Survey of the Literature.” *Technovation* 26(8): 895–931, 2006.

Helper, Laurence R. ,“Regime Shifting in the International Intellectual Property System.” *Perspectives on Politics* 7(1): 39–44, 2009.

Jain, Subhash C. ,“Problems in International Protection of Intellectual Property Rights.” *Journal of International Marketing* 4(1): 9–32, 1996.