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HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Abstract

Intellectual property rights have in recent years become increasingly relevant in diverse policy areas, including trade, culture and heritage, investment, environment, and scientific and technological development. In this context, it is undisputed that the appropriate intellectual property protection can contribute to economic, social and cultural progress. However, the role of intellectual property raises questions that are complex, rapidly evolving, and often very controversial. This especially if we take into account the fact that the protection of intellectual property should be balanced between two conflicting freedoms (the rights holders' and the society). It, therefore, is interesting to note, that the protection of intellectual property rights is embraced even in the Universal Declaration of Human Rights (UDHR). Article 27 (2) of UDHR explicitly recognizes that "*Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"*. However, according to the author of this paper, this is only a starting point of assessment if intellectual property rights are *per se* fundamental human rights. Particularly if we take into consideration the "paradox of property" which is rarely considered to be forming part of the *order public* and thus be considered as a right of fundamental interest for the society. This paper will aim to tackle the main concerns of considering intellectual property rights as human rights, providing some theoretical debate on this point and also practical case law analysis of the problem.

Keywords: human rights, intellectual property, moral and material rights, fair balance

I. INTRODUCTION

The relationship between human rights and intellectual property rights has historically been the topic of many debates, discussion and even tensions. The reasoning behind this can be found in the conflicting views of whether strong intellectual property protection promotes economic growth and what is the extent of the human welfare costs for this progress.

On one side of the debate is a coalition of developed countries, international organizations, multinational firms, and trade associations that continue in the longstanding tradition of rationalizing international IP rules as a prerequisite for national economic growth and development. On the other side is a less coordinated, but increasingly effective, alliance of global actors that challenge the international IP system largely on distributive justice grounds, particularly regarding issues such as access to essential life-saving medicines, educational materials, and seeds for farmers in poor countries. [1]

These rival standpoints are also influencing international organizations such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), through the process of passing and implementation legal acts. It can be seen from the preparatory documents of the Paris

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[1] Okediji Ruth, "Does intellectual property needs human rights", *International Law and Politics, vol. 51:1, 2018,* p. 3.

Convention for protection of industrial property (Paris Convention) and Bern convention for protection of copyright and related rights (Berne Convention), which are the cornerstones of the protection of the intellectual property, that there were serious differences in the viewpoints about the economic, moral and philosophical basis of granting exclusive rights to intellectual creations. [2]
The majority proposal for the Paris Convention, based on a view of patents as property, described "the right[s] of inventors and industrial creators in their own work" as one based on natural law. This was countered by a Swiss proposal stating that the rights of inventors and creative workers are a creation of "equitable and useful principles of the law of each nation which should reconcile this right ... with the rights of society."[3] The Bern Convention outlines the principle of copyright being a human right by itself. It is based on three basic principles (national treatment, automatic protection and independence of protection), and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them. This conclusion accepts that international copyright law is already compliant with international human rights law.[4]
The newer intellectual property-related documents, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) seem to deter from this tendency. From the outset of the TRIPS Agreement, it is evident that it contains the basic principles embedded in the Berne Convention such as the principles of national treatment, automatic protection and independence of protection, but it also provides the principle of most-favoured nation which brings the intellectual property rights one step closer to human rights. However, the TRIPS Agreement is considered to be controversial in many aspects regarding the views of the relationship between human rights and intellectual property rights. Some scholars argue that under the TRIPS Agreement the human rights represent non-exclusive exceptions to intellectual property law. [5] Moreover, this debate is very popular in the sphere of the right to health and thus the fulfilment of the obligations of the states under the TRIPS Agreement.
From the perspective of human rights, the international human rights law has special prerequisites for protection the of intellectual creations, and thus the "creators" (authors). It is important to outline Article 27 of the Universal Declaration of Human Rights (UDHR) which protects the moral and material interests of authors. The intellectual property rights are also subject to protection as fundamental human rights under the European Convention of Human Rights (ECHR). In the ECHR the intellectual property rights' violations are protected under the outlined right to property. If we apply the broadest interpretation of the ECHR, we can also link the right of the intellectual property creators (authors) with their rights to access, use and share intellectual works by relying on their freedom of expression and their human right to education.
This article will demonstrate that there is an obvious interconnection between intellectual property rights and human rights, however, the role of the society and legislators is to find the right balance and enable the appropriate level of protection both from the intellectual property and the human rights perspective. Furthermore, this Article argues that the human rights framework has a crucial role in strengthening intellectual property rights and by that, it imposes an obligation of promoting human welfare ideas. It suggests that intellectual property should be seen through the lenses of human rights and to seek the appropriate equilibrium in such fashion.

[2] Kronstein Heinrich, Till Irene, "A Reevaluation of the International Patent Convention", *12 L. & CONTEMP. PROBS.*, *1947*, p. 765-766.
[3] Ibid.
[4] https://www.wipo.int/treaties/en/ip/berne/summary_berne.html.
[5] Beiter D. Klaus, "Establishing Conformity Between TRIPS and Human Rights: Hierarchy in International Law, Human Rights Obligations of the WTO and Extraterritorial State Obligations Under the International Covenant on Economic, Social and Cultural Rights" in *TRIPS-plus 20*, Springer, p. 445-505.

II. DEFINING THE INTELLECTUAL PROPERTY RIGHTS

The intellectual property represents the creations that arise from the intellectual activities in the industry, science, literature and art. Generally speaking, the intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied, but instead to the intellectual creation as such. Intellectual property rights are subject of the protection of various international conventions and agreements and although are very heterogenic have two common constants: the subject matter and the function. [6]

The key point of the protection of intellectual property rights is the possibility to regulate in a balanced way the rights of the intellectual property right holders and the interest of the society. The success of the efforts to establish the norms for the protection of intellectual property depends largely on the perceived impact which the adoption of such norms may have upon a country`s economic and political development. There are two contrasting positions: one of the industrialized countries and one of the less developed nations. Namely, the industrialized countries are generally perceived as exporters of intellectual property and therefore relay upon the economic rights which inhere in "property" to defend the strong protection standards. Contrary, the less developed countries, often fail to provide strong protection of intellectual property rights on the general excuse that they tackle the "common heritage of mankind". [7]

The intellectual property rights are divided into two major groups copyright and related rights and industrial property.

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings. In most countries, copyright protection is obtained automatically, without the need of registrations, which is also one of the basic principles of the Berne Convention. Most countries nonetheless have a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment and/or transfer of rights.[8]

When defining industrial property rights, the modern doctrine and practice, include the set of rights which are stipulated in Article 1 of the Paris Convention for the protection of Industrial property (Paris Convention).[9] Namely, under this Article, the subjects of protection of the industrial property rights are patents, utility models, industrial designs, trademarks, trade name, geographical indications and unfair competition. This division of industrial property rights is adopted in most of the countries in the world. The main characteristic of these rights is the possibility to group them into two major groups, depending on whether they are registered in order to enjoy protection or not. In the group of registered industrial property rights are patents, utility models, industrial designs, trademarks, trade name, geographical indications, domain name and topography of integrated circuits. On the other hand in the second group are know-how, trade secrets, trade dress. These rights are only protected through the mechanisms for protection against unfair competition. [10]

According to a study of WIPO[11], the intellectual property rights have the following 10 key features:

1. The intellectual property rights are established and enforced through national laws;

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[6] Анастасовска Д. Ј., Пепељугоски В. (2012), *"Право на интелектуална сопственост",* Академик, Скопје, p.19.
[7] D`Amato A. (1996), "*International Intellectual Property Anthology"*, Anderson Publishing Co., Cincinnati, p 25.
[8] https://www.wipo.int/copyright/en/ [Accessed 24.11.2020].
[9] Bently L., Sherman B. (2014), *"Intellectual Property Law",* Oxford University Press, p. 15.
[10] http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch2.pdf [Accessed 24.11.2020].
[11] https://www.wipo.int/edocs/mdocs/tk/en/wipo_iptk_ge_19/wipo_iptk_ge_19_presentation_1_ip_tk_tces.pdf [Accessed 24.11.2020].

2. The intellectual property rights are territorial: country by country;
3. International treaties set basic standards and enable cross-border enforcement: no "one size fits all";
4. The intellectual property rights are transferable – by contract;
5. The intellectual property rights are diverse in nature: "exclusive economic rights", which allow the rights owner to derive financial reward from the use of their works by others; "moral rights", which protect the non-economic interests; and the "rights to compensation";
6. The protection of the intellectual property rights is subject to exceptions and limitations;
7. The intellectual property rights provide owners with choices: to enforce or not; whom to allow to use and on what terms
8. Most of the intellectual property rights expire after a certain period (only trademark rights can be extended indefinitely on certain conditions);
9. Most of the intellectual property rights need first to apply for, examined and then registered – only copyright arises automatically
10. The intellectual property rights systems are in constant evolution – policymakers respond to new forms of intangibles, changing needs and owners and users

By analyzing the definitions and the basic characteristics of intellectual property rights, one can easily conclude that the intellectual property system enables the creators to receive recognition and financial benefit of their creations, but it also promotes inventiveness, economic development and social welfare.

III. THE CONTROVERSY OF INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS PROTECTION

In order to understand the "isolation" of the human rights from intellectual property rights, one must look back in history. Many scholars consider that it is a mystery why intellectual property rights and human rights have remained unfamiliar for such a long period of time, especially if we take into account the fact that the UDHR and ECHR date back to the 1950s and are ratified by many nations.
Yet for years, the intellectual property remained a normative backwater in the human rights pantheon, neglected by treaty bodies, experts, and commentators while other rights emerged from the jurisprudential shadows. Nor was human rights law's nominal interest in intellectual property reciprocated by the intellectual property regime.[12]
On the other hand, as it will be demonstrated below there was also certain jurisprudential separation. The reasoning behind this was that both legal branches were preoccupied with other important issues, and neither saw the other as either aiding or intimidating its influence or opportunities for expansion. The human rights community was historically the one that noticed the intellectual property law. There were two events that brought these topics of discussion in the human rights community, respectively the rights of indigenous people and traditional knowledge and later on the TRIPS Agreement.[13] Both events reviled the normative differences of the intellectual property law from the human rights perspective and emphasized the need to change.

i. Conflict or coexistence?

The essence of the debate on intellectual property rights and human rights is the distinction between individual rights and community (public) rights. There are three possible interpretations in this respect: the first is that intellectual property rights have no human rights dimension and are purely legal rights; the second is that intellectual property rights are human rights, with the emphasis on

[12] Laurence R. Helfer, "Human Rights and Intellectual Property: Conflict or Coexistence?", *5 MINN. INTELL. PROP. REV. 47 (2003),* p. 49.
[13] Ibid. p. 52.

property rights and individual concerns; the third interpretation is that some aspects of intellectual property rights have potentially adverse implications for human rights.[14]
The vast majority of scholars are on the opinion that the interpretation which is based on the premises that the intellectual property rights have no human rights dimension and are purely legal rights is incorrect given that, with regard to copyright at least from the outset of the Berne Convention, "the copyright is based on human rights and justice and that authors, as creators of beauty, entertainment and learning, deserve that their rights in their creations be recognized and effectively protected both in their country and in all other countries of the world."[15]
With regard to the second interpretation, namely that intellectual property is essentially the same as property intangible assets and must therefore be secured by the same legal guarantees.
The reference of the intellectual property in the international human rights documents is explicitly made in the UDHR, but also by the manner of interpretation in the ECHR.
The UDHR in Article 17(1), recognizes that "everyone has the right to own property alone as well as in association with others" and in Article 17(2), that "no one shall be arbitrarily deprived of his property." Furthermore, in Article 27 it is stated that: "(1) Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".
Unlike the UDHR the ECHR does not contain an explicit provision that refers to the protection of intellectual property rights as human rights. However, the theoretical debate and the jurisprudence of the European Court of Human Rights point out the assumption that the ECHR also enables the human rights protection of intellectual property rights. Namely, Article 1 of Protocol 1 towards the ECHR provides the right to property (which can also be extended to intellectual property). Also, the wider interpretation of the ECHR includes Article 10 – freedom of expression and Article 8 – right to privacy.
According to the Guide on Article 1 of the Protocol 1 towards the ECHR, it applies to intellectual property as such, treating the intellectual property as property towards non-physical assets. Additionally, it applies to an application for registration of a trademark even prior to the trademark being registered and *a fortiori* to trademarks, patents and copyrights. It also extends that the right to publish a novel and the right to musical works and the economic interests deriving from them, also by means of a license agreement.[16]
The Guide on Article 10 of the ECHR explains that when assessing the freedom of expression, it should be made in connection with the right of property (containing the intellectual property). This presupposes balancing between the two rights which enjoy equal protection under the Convention. [17]
The right to privacy of Article 8 of the ECHR and intellectual property can be connected through the exclusive right of the creator (author) to allow disclosure of its work.
According to Chapman the intellectual property rights have an intrinsic value as an expression of human dignity and creativity and that, put another way, artistic and scientific works are not first and foremost economic commodities whose value is determined by their utility and economic price tag. A human rights approach takes what is often an implicit balance between the rights of inventors and creators and the interests of the wider society within intellectual property paradigms and it makes it far more explicit and exacting. From a human rights perspective, the rights of the creator are not absolute but conditional on contributing to the common good and welfare of society. [18]

[14] Matthews Duncan, "Intellectual Property Rights, Human Rights and the Right to Health", *Queen Mary University of London, School of Law, Legal Studies Research Paper No. 24/2009,* p. 2.
[15] Assembly of the Berne Union "Solemn Declaration" of 9 September 1986.
[16] https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf, [Accessed on 24.11.2020]
[17] https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf, [Accessed on 24.11.2020]
[18] Chapman Audrey, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, United Nations Committee on Economic, Social and Cultural Rights, E/C.12/2000/12, 3 October 2000, para 23-27.

If we analyze these provisions it is evident that intellectual property rights should be viewed as human rights. This is due to the fact that the rights of the creator (authors) are not just good for themselves, but are also understood as essential preconditions for cultural freedom and participation and scientific progress.

This leads us to the third interpretation of intellectual property rights and human rights, namely that some aspects of intellectual property rights may have potentially adverse implications for human rights.
The first point of discussion here is the need of finding a fair balance between intellectual property protection and human rights protection. The requirement of striking the right balance comes from the wording of the international documents, but also the court practice. Namely, the current regime recognizes the right of everyone to enjoy the benefits of scientific progress and its applications and at the same time, it recognizes the right of everyone to benefit from the protection of the moral and material interests resulting from the intellectual property protected work. Another difference is that human rights are fundamental as they are inherent in the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole. [19]
Taking into account these two aspects, the States are bound to tailor the national system for intellectual property protection to find the right balance between promoting general public interests in accessing new knowledge as easily as possible and in protecting the interests of authors and inventors in such knowledge.[20]
From the outset of these three approaches, it can be deduced that human rights and intellectual property, two bodies of law that were once strangers, are now becoming increasingly intimate bedfellows. For decades the two subjects developed in virtual "isolation" from each other. In the last years, however, the international standard-setting activities have begun to map previously uncharted intersections between property law on the one hand and human rights law on the other. [21]
It is important to note that finding the right balance is common for the system of intellectual property protection. Nevertheless, the question is essentially were to strike the right balance, namely whether the greater emphasis should be given to protecting the interests of inventors and authors or to promoting public access to the new knowledge?

IV. FINDING THE RIGHT BALANCE THROUGH THE COURT JURISPRUDENCE

The analysis of the jurisprudence of the European Court of Human Rights (the Court), but also the Court of Justice of the European Union (CJEU), shows that the intellectual property related cases are most commonly assessed under the protection of the right of property, and less under the right of freedom of expression and the right to privacy.
This Article will analyze various court cases from both the Court and the CJEU to derive a conclusion from a practical point of view for the topic of discussion.
In the landmark case *Anheuser-Busch Inc. v. Portugal* of 2007[22] the applicant company alleged a violation of its right to the peaceful enjoyment of its possessions as a result of being deprived of the right to use a trademark "Budweiser". In paragraph 72 of the Judgement the Court clearly stated that "*In the light of the above-mentioned decisions, the Grand Chamber agrees with the Chamber's conclusion that Article 1 of Protocol No. 1 applies to intellectual property as such. It must now*

[19] Matthews Duncan, op. cit. p. 5.
[20] Matthews Duncan, op. cit. p. 6.
[21] Laurence R. Helfer, "Human Rights and Intellectual Property: Conflict or Coexistence?", *5 MINN. INTELL. PROP. REV. 47 (2003),* p. 47.
[22] Case Number 73049/01

examine whether this conclusion also applies to mere applications for the registration of a trademark.". In assessing the violation of the right to trademark as a violation of the property right the Court took into account also "the bundle of financial rights and interests that arise upon an application for the registration of a trademark".[23] The Court in paragraph 78 of the Judgement concluded that: "these elements taken as a whole suggest that the applicant company's legal position as an applicant for the registration of a trademark came within Article 1 of Protocol No. 1, as it gave rise to interests of a proprietary nature. Indeed, the registration of the mark – and the greater protection it afforded – would only become final if the mark did not infringe legitimate third-party rights, so that, in that sense, the rights attached to an application for registration were conditional". Thus the Court ultimately decided that there was no breach of Article 1 of Protocol 1 of the ECHR.

In the case of *Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.Ş. v. Turkey*[24] of 2019, the Court majority found a violation of Article 1 of Protocol No. 1 on the grounds that there has been an interference with the applicant company's trademark rights. However, since later developments at the domestic level have made clear that the applicant company could not claim any protection whatsoever from a trademark registration that was declared null and void, there is, no basis for holding that a property right existed. The application should therefore have been declared incompatible *ratione materiae* with the provisions of the ECHR and the Protocols thereto.[25]

The jurisprudence of the Court is also extended to the patent law. Namely in the case *Smith Kline and French Laboratories Ltd. v. the Netherlands*[26], the applicant alleges a breach of Article 6 of the ECHR. It submitted that its right to Patent No. 162073 is a civil right and that the decisions by the Special Division and Appeal Division on the dispute between the applicant and Centrafarm constituted a determination of the applicant's rights. However, the applicant complained that the Patent Office does not constitute an independent tribunal within the meaning of Article 6 para. 1 of the ECHR and its decision to uphold the compulsory license is not subject to review by any court or other judicial body. The Court adopted the standpoint that the applicant was deprived of the right to remedy provided in Article 13 of the ECHR, but also linked it with the violation of Article 6 (6) of the ECHR and Article 1 of the Protocol 1 of the ECHR assessing the patent right as a right of possession of non-material assets.

In another case *Melnychuk v. Ukraine* of 2003, the applicant was deprived of the right to publication of his written reply to the newspaper. He maintained that they had undermined his popularity and violated his copyright. The Court, however, dismissed his application as inadmissible.

One of the most popular copyright cases was the "The Pirate Bay" Case, or *Fredrik NEIJ and Peter SUNDE KOLMISOPPI against Sweden*[27] of 2012. During 2005 and 2006 the applicants were involved in different aspects in one of the world's largest file-sharing services on the Internet, the website "The Pirate Bay". The service used the so-called BitTorrent protocol, which made it possible for users to come into contact with each other through torrent files (which in practice function as Internet links). The users could then, outside TPB's computers, exchange digital material through file-sharing. In January 2008, the applicants and two other persons were charged, inter alia, with complicity to commit crimes in violation of the Copyright Act. The applicants complained under Article 10 of the ECHR that their right to receive and impart information had been violated when they were convicted for other persons' use of TPB. The Court reasoned that "the nature of the information contained in the shared material and the weighty reasons for the interference with the applicants' freedom of expression". The Court found that the interference was "necessary in a democratic society" within the meaning of Article 10 § 2 of the ECHR. In addition, it emphasized that The Court in its decision explicitly stated that the copyright holders are protected under Article

[23] Paragraph 76 of the Judgement of 2007 in the case *Anheuser-Busch Inc. v. Portugal 730489/01*
[24] Case number 19965/06 of 2019.
[25] Paragraph 9 of the Dissenting opinion of Judge Lemmens of Case *Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.Ş. v. Turkey, 19965/06 of 2019.*
[26] Case number 12633/87 of 1990.
[27] Case number 40397/12 of 2012.

1 of Protocol 1 of the ECHR. It follows that the application was rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the ECHR.
Concerning the licensing right, the case *Tre Traktörer Aktiebolag v. Sweden* of 1989[28], the Government argued that a license to serve alcoholic beverages could not be considered to be a "possession" within the meaning of Article 1 of Protocol 1 of the ECHR. This provision was, therefore, in their opinion, not applicable to the case. Like the Commission, however, the Court takes the view that the economic interests connected with the running of Le Cardinal were "possessions" for Article 1 of Protocol 1 of the ECHR. Indeed, the Court has already found that the maintenance of the license was one of the principal conditions for the carrying on of the applicant company's business and that its withdrawal had adverse effects on the goodwill and value of the restaurant. The standpoint was confirmed in the case *Alatulkkila and Others v. Finland*[29] of 2005 although the Court found that there is no breach of Article 1 of Protocol 1 of the ECHR.
Finally, one of the most important cases of the ECHR is the *Ashby Donald et Autres c. France*[30] of 2013 speaks of finding the balance of interests between intellectual property rights and human rights. The Court in its decision paragraph 40 states that "it ruled based on Article 11 of the Convention that, when the aim pursued is that of "the protection of the rights and freedoms of others" and these "rights and freedoms" are included - even among those guaranteed by the ECHR or its Protocols, it must be admitted that the need to protect them may lead States to restrict other rights or freedoms also enshrined in the Convention". It is therefore difficult to balance the potentially contradictory interests of each other, and the Contracting States must have a wide margin of appreciation in this regard.
The jurisprudence of the CJEU also provides some examples of the balancing paradigm.
In *Scarlet*, the CJEU developed this nucleus to the general principle that "the protection of the fundamental right to property, which includes the rights linked to intellectual property, must be balanced against the protection of other fundamental rights".[31]
In *Bonnier Audio*, the CJEU applied the fair-balance test to a specific compromise between copyright enforcement on the internet and privacy under Swedish national law, although the Högsta domstolen had limited its referring questions to certain directives and expressly declared that the enforcement measure at issue was considered proportionate.[32]
In *Luksan*, the CJEU held that national legislation that denies the principal director of a cinematographic work the rights to exploit her work runs afoul of art 17 para 2 of the Charter.[33]
The interference in the sphere of human rights, which was also assessed in the TBP Case in front of the Court, was also enshrined some years before in the Case of *Metronome Musik* of 1998. In this case, the ECJ stated that "*any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms*".
From the analyzed jurisprudence of the CJEU, which is also outlined in the *Sky Österreich*, the CJEU employs the balancing exercise irrespective of whether the freedom to conduct business conflicts with the freedom of the press or the property right. The reason for this is that for CJEU all fundamental rights are of equal normative value and that there is no hierarchical order between them.[34]

V. A STEP FORWARD

The normative, theoretical and judicial approach point out to the conclusion that the gap between human rights and intellectual property rights is slowly reducing. Although it has to be noted that there are still advocates both for the conflict approach and the coexistence approach.

[28] Case number 10873/84 of 1989.
[29] Case number 33538/96 of 2005.
[30] Case number 36769/08 of 2013.
[31] CJEU Case C-70/10 *Scarlet Extended* [2011] ECR I-0000, paras 41 et seq; CJEU Case C-360/10 *SABAM* [2012] ECR I-0000, paras 42-44.
[32] CJEU Case C-461/10 Bonnier Audio [2012] ECR I-0000, paras 56-60.
[33] CJEU Case C-277/10 Luksan [2012] ECR I-0000, paras 68-71.
[34] CJEU Case C-283/11 Sky Österreich [2013] ECR I-0000, paras 59-60.

In this respect, it should be made clear that the resolution is not to be found in prevailing the human rights over intellectual property rights and *vice versa.* On the contrary, the position of the author of this paper is that the coexistence and parallel progress of human right and intellectual property rights is the right path of solving the dilemma.

The first solution to the debate of conflict vs. coexistence of human rights and intellectual property rights is inventive to develop soft law human rights norms. Human rights law is notably elastic and contains a variety of mechanisms to develop more precise legal norms and standards over time. [35]

In parallel to this, the lawmaker should think of the concept of "maximum standards" of intellectual property protection. The problem here is not the international treaties level, but the bilateral treaties, the domestic laws and the enforcement of these laws by the states. Whether maximum standards of intellectual property protection emerge will depend upon how the human rights norms are received in established intellectual property lawmaking venues such as WIPO and the WTO.

The integration of human rights in the WIPO and WTO is somehow uncertain. However, it should be noted that this process will strengthen the legitimacy of these organizations and promote the integration of legal rules governing the same broad subject matter. In addition, the role of the courts in reaching this balance is also very important. As it can be deducted from the analyzed cases, the court often has very interesting interpretations to the correlation between human right and intellectual property rights and the possible breaches.

Reaching a verdict on whether the balance in intellectual property law is compliant with the balance that human rights law requires between authors' and users' human rights is a work in progress. A human rights balance between authors' and users' human rights means that the implementation and/or adjudication of these human rights must adhere to the following rules: both sets of human rights are reciprocally limited; they do not exist in a hierarchy, and their proper interpretation occurs only in light of the interrelation and indivisibility of all international human rights.

The role of intellectual property law in the progress of societies cannot be overemphasized; appropriate intellectual property protection can contribute to the economic, social and cultural progress of the world's diverse populations. However, the role of intellectual property in the development and related policy areas raises questions that are complex, rapidly evolving, and, at times, controversial. [36]

Taking into account the fact that the human rights approach also establishes a different and often more exacting standard for evaluating the appropriateness of granting intellectual property protection, in order for intellectual property fulfil the conditions necessary to be recognized as a universal human right, intellectual property regimes and the manner they are implemented first and foremost must be consistent with the realization of the other human rights. [37]

In conclusion, human rights and intellectual property rights have always existed together and the goal is to keep this existence as much coherent as possible.

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[35] Laurence R. Helfer – op. cit. p. 57.
[36] WIPO, *Intellectual property and human rights,* Geneva 1998, p. 2
[37] Ibid.

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