



Current International Agreements in the Field of Intellectual Property at the Level of the Commonwealth of Independent States and the Problems of Their Application

Anton V. Gurko[✉], Viktoriia S. Savina[✉], and Julia S. Kharitonova[✉]

Abstract

Purpose: This article examines the system of operating international agreements on the protection of intellectual property in the Commonwealth of Independent States (CIS). **Design/methodology/approach:** The methodological background of this study is made up of general and specific methods of scientific research. The comparative-law method allowed us to compare the legal rules of various universal and regional (within the CIS) international treaties governing intellectual property issues; the historical method made it possible to track the evolution of legal rules and organizational decisions on the topic of research; an empirical method enabled the study of the laws and exercise of intellectual rights to the results of creative activity and individualization means of goods, works, services, and enterprises equivalent to them; the method of systemic analysis, analogies, formal-law, and logical methods helped us to classify the available empirical data as well as detail findings attained in the course of this study for their further use. **Findings:** In view of the historical importance and conditions accompanying the adoption of the CIS agreements in the field of intellectual property, the authors note that one of the key issues resolved by these agreements is how to determine the legal succession of the member states countries to universal agreements in the field of intellectual property, to which the Union of Soviet Socialist Republics was a party. **Uniqueness/value:** After completing the study, the authors made conclusions about the prospects for the adoption of new treaties in the field of intellectual property at the CIS level, identified the key problems to be resolved by these agreements as well as obstacles to

the conclusion of new agreements in the field of intellectual property of both intrinsic and political nature.

Keywords

Intellectual property • Intellectual activity • International agreements • Law enforcement • Commonwealth of independent states (CIS)

JEL Classification

K33 • K11

1 Introduction

Rights to legally protected results of intellectual activity are territorial in nature, even when they are granted as a package of national rights existing in several different jurisdictions. Consequently, intellectual property is not protected solely by international law acts. The result of intellectual property or means of individualization is subject to protection at the territory of their use under the national law rules.

However, as evidenced in practice, there is an urgent need to bring into line national laws governing the legal regime of intellectual property objects, as well as legal remedies. The most pressing issues concern determination of jurisdiction in disputes over intellectual property, the applicable law to infringement of the results of intellectual activity, invalidity, and violation of the contract terms, as much as confession and execution of judgments rendered in foreign jurisdictions. In other words, the above issues hinder the establishment of a basis for the emergence and development of the digital economy and the mutually profitable commercialization of exclusive rights (Bliznets et al., 2018).

Efforts to solve the above-indicated problems are taken at various levels of legal governance, including regional international acts. The harmonization of laws and regulations

A. V. Gurko (✉) · V. S. Savina
Plekhanov Russian University of Economics, Moscow, Russia
e-mail: savin-viktoriya@yandex.ru

J. S. Kharitonova
Moscow State University named after M.V. Lomonosov, Moscow, Russia

in the field of intellectual property is pursued both in universal and regional international agreements. For example, regional international agreements operate in the states of the European Union, former members of the USSR, Africa, Latin America, the Asia–Pacific region, etc. A striking example of this harmonization is cooperation in the field of regulatory practices of the CIS member states.

Kashkin and Chetverikov (2015) rightly point out that almost all integration organizations today function in particular regions of the world, and it means that they act as regional integration organizations. We agree with this thought and believe that due to the interpenetration of various national economies within integration organizations unification of intellectual property law rules gains special importance.

2 Materials and Method

In the course of this study, we employed general and specific methods of scientific research, in particular, comparison, description, interpretation, formal and dialectical logic, legal-dogmatic method, modeling, system-functional method, induction and deduction, formal logic method, systemic approach.

The methodological background of this study is made up of general and specific methods of scientific research. The comparative-law method allowed us to compare the legal rules of various universal and regional (within the CIS) international treaties governing intellectual property issues; the historical method made it possible to track the evolution of legal rules and organizational decisions on the topic of research; an empirical method enabled the study of the laws and exercise of intellectual rights to the results of creative activity and individualization means of goods, works, services, and enterprises equivalent to them; the method of systemic analysis, analogies, formal-law, and logical methods helped us to classify the available empirical data as well as detail findings attained in the course of this study for their further use.

3 Findings

Economic and legal integration of the CIS countries in the field of intellectual property was in full swing in the 90s of the twentieth century and resulted in the conclusion of Eurasian Patent Convention on August 12, 1995 (Rospatent., 1994). This international treaty has built a unified Eurasian patent system (regional organization). Thereby, now it is possible to get a Eurasian patent that is a title of protection granting legal safeguard of inventions within the territory of all parties thereof. Originally, the instrument was signed by

the Republic of Azerbaijan, Georgia, the Kyrgyz Republic, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Moldova, the Republic of Tajikistan, the Russian Federation, and Ukraine. However, this convention calls for ratification, but Georgia and Ukraine failed to do this.

For the full-fledged performance of the unified patent system of the Eurasian space, the Eurasian Patent Organization, a body that would grant titles of protection and record patent applications was instituted. It consists of the Eurasian Patent Office and Administrative Council. The Administrative Council is a representative body where the representatives of the Eurasian Patent Convention member states take a seat. The council mainly discharges a political function. The Eurasian Patent Office records patent applications, allows/declines them, and issue Eurasian patents.

The Commonwealth of Independent States (hereinafter—the CIS) attaches high importance to the legal regulation of intellectual property. For some historical reasons, the CIS countries have always been close in the socio-economic area. After the collapse of the Union of Soviet Socialist Republics (hereinafter referred to as the USSR) and the emergence of independent sovereign states in the post-Soviet space, the CIS faced the need to harmonize the laws and regulations of the CIS member states in the field of intellectual property in view to recovering civil commerce in the CIS space, developing cultural exchange and cementing equitable interstate trade and economic ties. Recognizing the contribution of the CIS to sustainable development, Shugurov (Shugurov, 2018, 2019; Shugurov & Shugurova, 2019) emphasizes that the CIS integration processes are a good footing for a single Eurasian market.

Along with bilateral international agreements between individual states on the legal protection of intellectual property, within the CIS, there are also international agreements of regional character.

For example, Agreement on Cooperation to Repress Offenses in the Field of Intellectual Property (1998), Agreement of the CIS Countries on Cooperation in Protection of Copyright and Associated Rights (1993), Agreement on Mutual Keeping of Interstate Secrets concerning Legal Protection of Inventions in Strict Confidence (1999), Agreement on Measures to Prevent and Combat the Use of False Trademarks and Geographical Indications (1999), Agreement on the Release of a Joint Regional Patent-information Product of the CIS Countries on CD-ROM (2001), etc.

The CIS works much on issues of intellectual property in the post-Soviet space. For dealing with concerns and ongoing matters, the organization established the Interstate Council for Intellectual Property participated by the heads or other representatives of the patent offices of the member states.

The main objective of this agreement is to create a single legal environment in the post-Soviet space by securing the application and execution of rules and standards of the systemically important international agreements on safeguarding copyright and related rights. First and foremost, this goal has been achieved due to the procedure for compliance with the obligations arising out of the USSR's participation in international conventions and treaties by the member states.

Art. 1 of the copyright agreement sets down that the parties shall take reasonable measures to secure the fulfillment of the obligations imposed by the ratification by the USSR of the Universal Copyright Convention (this matter is touched in Article 2 of the copyright agreement). In other circumstances, the copyright agreement obliges the parties to ensure the compliance of national law rules with international standards, basic international treaties that lay the basis for international legal regulation in the field of protection of copyright and related rights.

As a matter of fact, this agreement is intended to establish a framework for cooperation of the CIS member states in dealing with concerns and urgent issues of safeguarding and protection of copyright and related rights that proved its performance until was valid. However, the instrument has never been amended or supplemented, therefore, there is a need to update it bearing in mind its role for the CIS member states as well as new procedures for the conclusion of new international agreements on the safeguarding of intellectual property.

As communicated by the depository of the CIS Executive Committee as of May 17, 2020, the following countries entered into the copyright agreement (Table 1).

Since 2016, the protocol to amend the copyright agreement was underway, however, it has not yet been adopted, and no amendments have been made to this agreement. The authors of this article participated in the work on the draft of the above protocol with the team of the Russian Academy of Intellectual Property.

The copyright agreement specifies that the CIS countries are obliged to take reasonable efforts to ensure the elaboration and adoption of national laws that provide for the legal safeguard of copyright and related rights equal to the provisions of several universal international agreements (Berne Convention for the Protection of Literary 2003; Geneva Convention for the Protection of Producers of Phonograms 1999; Rome Convention for the Protection of Performers 2005).

Therefore, the CIS countries brought their national laws and regulations in compliance with the requirements of the copyright agreement provision and acceded to the above international conventions. The Berne Convention admitted a string of countries (as of May 17, 2020) (Table 2).

The below parties to the copyright agreement have acceded to the Geneva Convention (Table 3).

The following parties to the copyright agreement joined the copyright agreement of the Rome Convention (Table 4).

Thus, most of the state parties have fully complied with the provisions of Article 3 of the copyright agreement.

Thus, the CIS member states have undertaken obligations to comply with the provisions of the main international agreements on the safeguarding of intellectual property. We believe that regional international cooperation can enhance international integration in general, since it implies accession to universal agreements of states that are not yet the parties of the above act but members of regional alliances of countries such as the CIS.

Let us note that the advancement of the international legal regulation of intellectual property safeguard is inconceivable without appropriate amendments to the national laws and regulations of the parties to the agreement.

Thus, since the signature of the CIS copyright agreement, key international treaties that govern the legal safeguard and protection of copyright and related rights have been adopted, namely the World Intellectual Property Organization Treaty on Performances and Phonograms (1996), the World Intellectual Property Organization Treaty on Copyright (1996), Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), Beijing Treaty on Audiovisual Performances (2012), Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities (2013).

Nowadays, many parties to the agreement have joined some of the above treaties, but it is necessary to attract the remaining states to the accession.

The Marrakesh Treaty underlies the principles of human rights protection announced in the Universal Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities. This is the first copyright treaty to define copyright as a key to broader access to books and other printed works for persons with severe print disabilities.

The Beijing Treaty is aimed at better safeguard and protection of the related rights of singers, musicians, dancers, and film actors (they enjoy the rights to so-called audiovisual performances) compared to the provisions of the Rome Convention for the protection of performers, producers of phonograms, and broadcasting organizations (1961). This improvement of international agreements rules concerns the safeguard of related rights, which are especially important in the terms of the digital economy. The provisions of the WIPO Performances and Phonograms Treaty (1996) that is the key instrument for the protection of performers and producers of phonograms on the Internet have also made a contribution.

Table 1 Parties to the copyright agreement

Countries that have signed the copyright agreement		
Countries	The date of signing	The date of effect
Republic of Azerbaijan	September 24, 1993	05.04.1996
Republic of Armenia	September 24, 1993	12.02.1996
Republic of Belarus	September 24, 1993	04.12.1997
Republic of Kazakhstan	September 24, 1993	06.05.1995
Kyrgyz Republic	September 24, 1993	28.12.1995
Republic of Moldova	September 24, 1993	09.04.1999
Russian Federation	September 24, 1993	06.05.1995
Republic of Tajikistan	September 24, 1993	07.05.1997
Turkmenistan	September 24, 1993	Not entered into effect
Republic of Uzbekistan	September 24, 1993	06.05.1995
Ukraine	September 24, 1993	27.06.1995
Countries that have acceded to the copyright agreement		
Georgia	Acceded on May 06, 1995	Withdrawn from the agreement on April 01, 2012

Source Drawn up by the authors according to the proceedings of Official site of the CIS Executive Committee (2020)

Table 2 Parties to the copyright agreement of the Berne Convention

Country	The date of accession
Republic of Azerbaijan	04.06.1999
Republic of Armenia	19.10.2000
Republic of Belarus	12.12.1997
Republic of Kazakhstan	12.04.1999
Kyrgyz Republic	08.07.1999
Republic of Moldova	02.11.1995
Russian Federation	13.03.1995
Republic of Tajikistan	09.03.2000
Turkmenistan	29.05.2016
Republic of Uzbekistan	19.04.2005
Ukraine	25.10.1995

Source Drawn up by the authors based on the provision of Berne Convention for the Protection of Literary (2003)

Table 3 Parties to the copyright agreement of the Geneva Convention

Country	The date of accession
Republic of Azerbaijan	01.09.2001
Republic of Armenia	31.01.2003
Republic of Belarus	17.04.2003
Republic of Kazakhstan	03.08.2001
Kyrgyz Republic	12.10.2002
Republic of Moldova	17.07.2000
Russian Federation	13.03.1995
Republic of Tajikistan	26.02.2013
Turkmenistan	Not acceded
Republic of Uzbekistan	Not acceded
Ukraine	18.02.2000

Source Drawn up by the authors on the back of Rome Convention for the Protection of Performers (2005)

Table 4 Parties to the copyright agreement of the Rome Convention

Country	The date of accession
Republic of Azerbaijan	05.10.2005
Republic of Armenia	31.01.2003
Republic of Belarus	27.05.2003
Republic of Kazakhstan	30.06.2012
Kyrgyz Republic	13.08.2003
Republic of Moldova	05.12.1995
Russian Federation	26.05.2003
Republic of Tajikistan	19.05.2008
Turkmenistan	Not acceded
Republic of Uzbekistan	Not acceded
Ukraine	12.06.2002

Source Drawn up by the authors based on Geneva Convention for the Protection of Producers of Phonograms (1999)

Taking into account the above stated, we see advisable to bring the national law and regulations of the parties to the agreement in compliance with the Marrakesh and Beijing treaties.

Under Art. 5 of the copyright agreement, the parties agreed to assist and cooperate in all respects on their territories to the establishment and performance of organizations for the collective management of copyright and related rights, as well as the interaction between them. This rule is aimed to build a system of collective management of rights in the CIS countries and buttress cooperation between these organizations.

4 Conclusion

The digitalization urged the need to update the legal framework of the CIS member states in accordance with modern standards for the safeguard of copyright and related rights set forth by a string of international treaties of the past two decades.

However, amendments to the agreement are designed not only to oblige member states to accede to new international treaties in the field of copyright and related rights protection. Changing the global political landscape, as well as the development of new digital technologies, put on the agenda new issues in the field of intellectual property. In the authors' opinion, the CIS can resolve these problems provided that the agreements that have already been concluded will be amended according to the needs of time and new treaties will be adopted.

For example, there is a pressing issue of retroactive application of the laws on copyright and related rights of the CIS member states to foreign works, as well as the determination of the jurisdiction of states for the use of protected

copyright objects in information and telecommunication networks. The issue of jurisdiction is not of idle interest, since the use of works on the Internet (including unlawful) is extraterritorial in contrast to the issues of liability for such a violation. This is also noted by Bliznets et al. (2017) using the example of photographic works.

Thus, regarding the development of digital technologies and the wide-scale cross-border exercise of intellectual rights, agreements in the field of intellectual property that have been earlier concluded between the CIS countries need to be completely updated. Moreover, this is a standing question on the advantages of participation in regional agreements on intellectual property both former USSR members and other countries of the Eurasian space.

References

- Agreement of the CIS Countries on Cooperation in Protection of Copyright and Associated Rights as of September 24, 1993. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/create/>. Accessed 12.02.2020.
- Agreement on Cooperation to Repress Offenses in the Field of Intellectual Property as of March 6, 1998. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/create/>. Accessed 19.04.2020.
- Agreement on Measures to Prevent and Combat the Use of False Trademarks and Geographical Indications as of June 4, 1999. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/create/>. Accessed 12.03.2020.
- Agreement on Mutual Keeping of Interstate Secrets concerning Legal Protection of Inventions in Strict Confidence as of June 4, 1999. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/create/>. Accessed 19.04.2020.
- Agreement on the Release of a Joint Regional Patent-information Product of the CIS Countries on CD-ROM as of May 22, 2001. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/create/>. Accessed 14.04.2020.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Concluded in Marrakesh on April 15, 1994 (as amended

- on December 6, 2005). Collected Acts of the Russian Federation, 2012, 37 (appendix, VI), 2818–2849, (appendix, V), 2336–2369.
- Beijing Treaty on Audiovisual Performances as of June 24, 2012. Available at http://www.wipo.int/treaties/ru/text.jsp?file_id=304396/. Accessed 12.03.2020.
- Berne Convention for the Protection of Literary and Artistic Works as of 09.09.1886 (revised on 28.09.1979). *Bulletin of International Treaties*, 2003(9).
- Bliznets, I., Kartschiya, A., & Smirnov, M. (2018). Technology transfer in digital era: Legal environment. *Tarih Kültür Ve Sanat Araştırmaları*, 7, 354–363.
- Bliznets, I., Savina, V., Sergo, A., Shcherbak, E., & Tsitovich, L. (2017). Features of the legal protection of photographs as objects of copyright on the Internet. *Espacios*, 38(62), 31–32.
- Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms as of October 29, 1971. *International Treaties Bulletin*, 1999(8).
- Kashkin, S., & Chetverikov, A. (2015). *Fundamentals of integration law: A study guide* (p. 83p). Prospekt.
- Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities as of June 27, 2013. Available at <http://www.wipo.int/treaties/ru/ip/marrakesh/>. Accessed 21.03.2020.
- Official site of the CIS Executive Committee, available at <http://www.cis.minsk.by/reestr/ru/index.html#reestr/view/summary?doc=259/>. Accessed 18.02.2020.
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations as of October 26, 1961. *Bulletin of International Treaties*, 2005(7).
- Rospatent. Eurasian Patent Convention 1994, available at <https://rupto.ru/ru/documents/evraziyskaya-patentnaya-konvenciya?> Accessed: 15.02.2020.
- Shugurov, M. (2018). CIS: prospects for interstate scientific and technological cooperation and technology transfer as a part of sustainable development goals. Great Eurasia: development, security, cooperation. Year book, 352–358.
- Shugurov, M. (2019). Intellectual property law of the Eurasian Economic Union: Systemic-legal approach. *Bulletin of the Saratov State Law Academy*, 4129, 82–99.
- Shugurov, M., & Shugurova, I. (2019). Cooperation within the CIS as an indicator of the EAEU integration in the field of intellectual property amidst digitalization of the economy and society. Great Eurasia: development, security, cooperation. Year book, 404–409.
- The World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty) as of December 20, 1996 (Original text), available at http://www.wipo.int/wipolex/ru/treaties/text.jsp?file_id=295439/. Accessed 12.02.2020.
- The World Intellectual Property Organization Performances and Phonograms Treaty as of December 20, 1996 (Original text) (Together with “Agreed Statements Concerning the WIPO Copyright Treaty”), available at http://www.wipo.int/treaties/ru/text.jsp?file_id=295578/. Accessed 12.02.2020.