

Challenges and priorities of the IP market as a condition for competitiveness in the digital economy

or

A smart and honest person can and should live richly

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Geneva, WIPO, May 20, 2019

IP as a condition for competitiveness

- Eurasian integration, having passed the path from the free trade zone in the CIS through the Customs Union and the single economic space to the EAEU, aims to form the Eurasian Union by 2030.
 - 2010 – single market for goods
 - 2015 – single market for services (42 + 21 by 2025)
 - 2017 – common market for medicines and medical devices
 - from January 1, 2018 – single EAEU Customs Code
 - from July 1, 2019 – single EAEU electricity market
 - **by January, 1 2025** – common EAEU market for hydrocarbons
 - single EAEU transport area
 - Common financial market of the EAEU
- Intellectual property as a restriction of the market freedom and a condition for competitiveness of goods, works, services in these markets in the context of the globalization crisis and growth of regionalization.**
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- A large, semi-transparent illustration of a balance scale is positioned in the background on the right side of the slide. The scale is tilted, with the right pan being higher than the left pan, suggesting an imbalance or a weighing process.

IP market in the EAEU countries (1992-2018)

Patterns of development of the global IP market:

The structure of world trade is changing in favour of the growth of the share of the “fourth basket” - the intellectual property market (currently more than 15% of GDP) with the restructuring of this sector of market relations, that in conditions of the ongoing global crisis of the patent system and increase in the share of non-patent sales (currently more than 80%) predetermines the need for policy change in this area.

Features of the IP market: in just 27 years in the EAEU countries:

- ❑ 1.4 million patents granted, 0.02-2% - being sold;
- 350 000 patents are valid (less than 1/3)
- In Russia, **177 000 patents** – early terminated during 5 years

Who benefits from such a patent turnover?

Indicators and rankings of IP: competitiveness

Competition in science is a way to fight for resources;

- Method of stimulating the increase in the effectiveness of the subjects of the scientific and technical sphere
- Key motivation for their innovative behaviour

In the 21st century in the CIS and EAEU scientometric indicators are narrowed down to bibliometric:

- publications, incl. in editions included in world databases (firstly – Web of Science and Scopus);
- citation, incl. Hirsch Index;
- magazine rankings, incl. journal impact factor, etc.

In the field of scientific activity – false competition

A transition from information indicators to indicators of IP economy is necessary.

(creation of value added in the IP turnover (share in the pricing of products, intangible assets, remuneration to the authors, etc.)

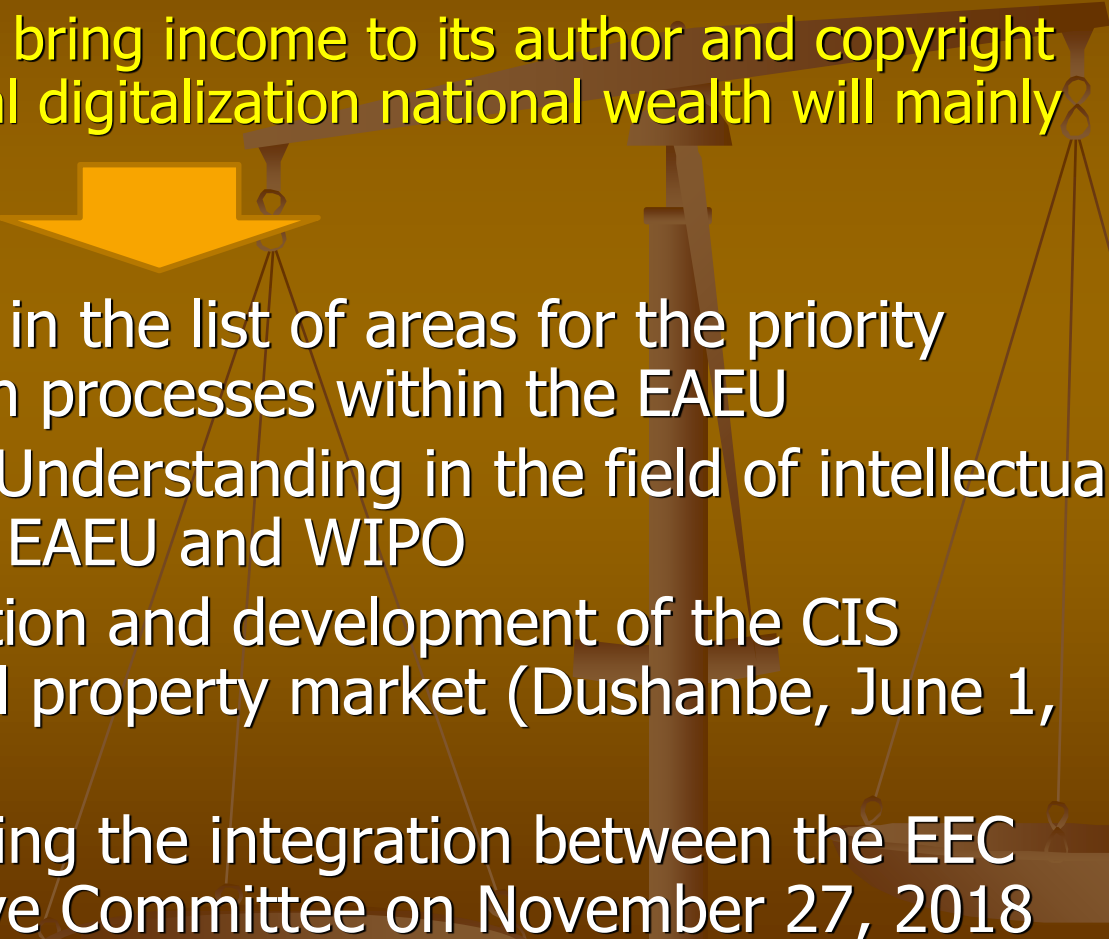
Competitiveness of IP: risks and obstacles

➤ A significant risk for the implementation of competitiveness programs is the **lack of economic indicators of the effectiveness of scientific research** (with an increase in internal spending on research and development, the main indicator of their performance is **information indicators** of the so-called “knowledge economy”, including the amount of publications, patent applications and patents by which we notify the world of the results of these studies for free).

Consequences of the use of "knowledge economy" indicators:

- failure to achieve key objectives and stated priorities to ensure the competitiveness of the created products, national right holders and producers;
- maintaining the same structure of R&D expenses with a small business participation (for 18 years in Russia, the budget share in R&D expenses has grown from 70% to 85%)
- high corruption potential of public procurement of R&D;
- “leaky” accounting policies with respect to the results of R&D created with budget financing, which leads to an increase in the illegal traffic and exports of such IP and rights to them;
- monopolization of activities related to science effectiveness assessment (by publications and quotation level) in private companies and creation of a business sector based on unfair competition (**as of April 1, 2019, over 230 million reports related to paid services for publishing scientific articles in Scopus and Web of Science, starting at \$1,000, on average**)
- **In Russia in 2018 defended 10 thousand doctoral dissertations in 30 branches of science, of which 1/2 in three branches: technical, medical and physico-mathematical**

IP market in the EAEU countries (1992-2018)

- In the transition to a digital economy, the share of value added from the IP turnover in the pricing of goods produced, works/services and finance will only increase, which in turn will increase competition, and in the absence of an IP market - unfair competition.
 - Intellectual property should bring income to its author and copyright holder. In the era of universal digitalization national wealth will mainly grow due to IP.
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- In 2017, IP was included in the list of areas for the priority implementation of common processes within the EAEU
 - 2018 - Memorandum of Understanding in the field of intellectual property between the EEC EAEU and WIPO
 - Agreement on the formation and development of the CIS member states intellectual property market (Dushanbe, June 1, 2018)
 - Memorandum on deepening the integration between the EEC EAEU and the CIS Executive Committee on November 27, 2018

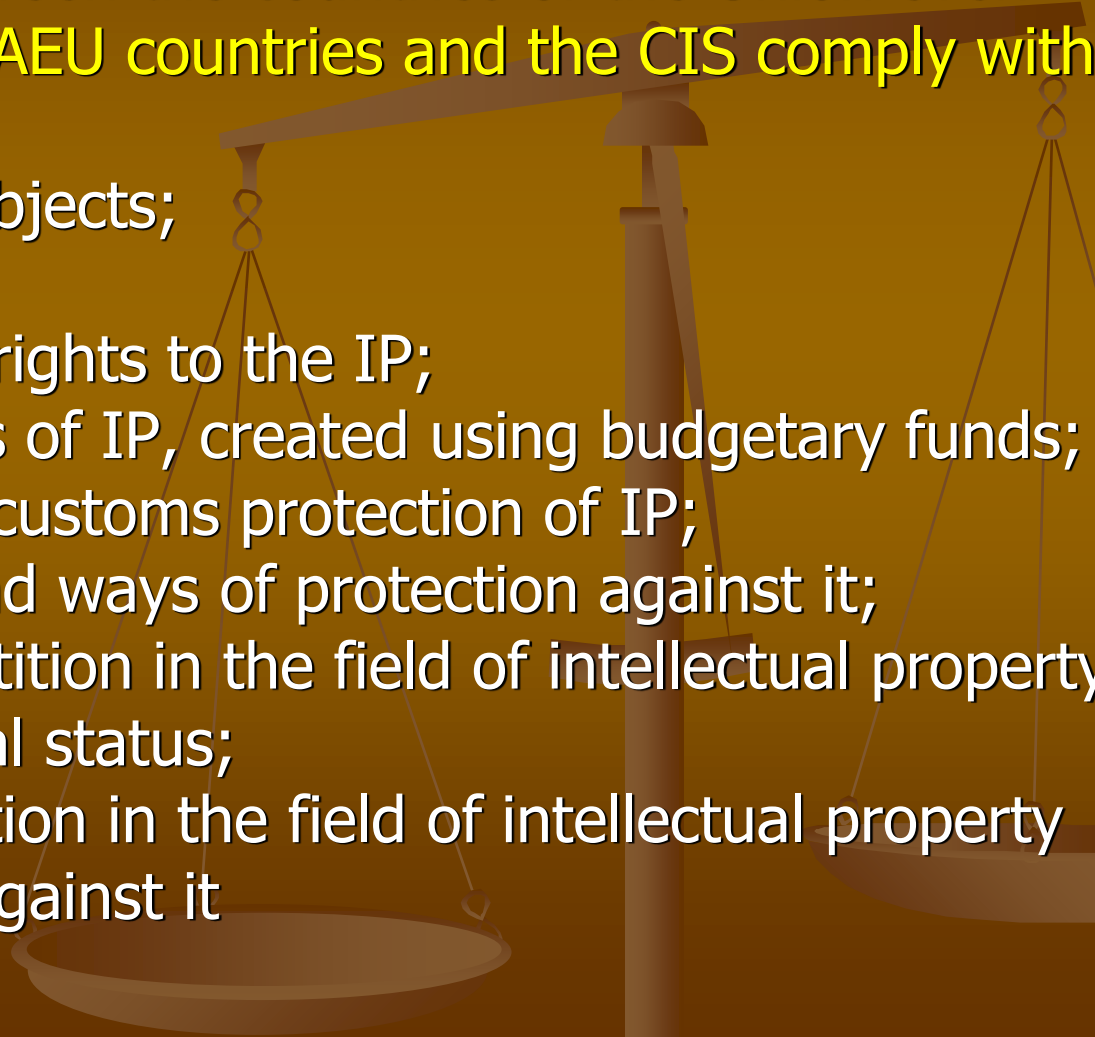
IP risks in digital economy

Levels of digital economy	IP risks
Markets and industries (interaction of suppliers and consumers of goods, works, services)	<ul style="list-style-type: none">▪ lack of IP market;▪ growth of unfair competition and immunities from antitrust IP regulation;▪ growth of contradictions between private and public interests under various principles of exhaustion of exclusive rights;
Platforms and technologies (competencies are formed for the development of markets and industries (big data, neurotechnology and artificial intelligence, distributed registry systems (blockchain), quantum technologies, new production technologies, industrial Internet, robotics and sensorics, etc.)	<ul style="list-style-type: none">▪ primary use of foreign software, incl. free;▪ “Leaky” accounting policy with respect to IP in information systems (PC, databases, PC algorithms);▪ no IP share in the pricing of digital products and the creation of value added in its turnover;
Environment (regulation, information infrastructure, personnel, information security)	<ul style="list-style-type: none">• high level of legal and economic illiteracy relating to IP;• preservation of legal conflicts on IP;• lack of professional staff in information security

IP risks: legal harmonization collisions

There remain fundamental national legal differences in the field of intellectual property between the countries of the Union even though the laws of the EAEU countries and the CIS comply with the WIPO treaties

- system of protected IP objects;
- the content of IP rights;
- restrictions on exclusive rights to the IP;
- definition of right holders of IP, created using budgetary funds;
- mechanisms of civil and customs protection of IP;
- concept of counterfeit and ways of protection against it;
- subjects of unfair competition in the field of intellectual property and features of their legal status;
- means of unfair competition in the field of intellectual property and ways of protection against it



Parallel import in the EAEU

in the EAEU - regional principle of exhaustion of rights (Annex 26 of the EAEU Treaty, EAEU Customs Code)

in Russia – national principle of exhaustion of rights (Article 1487 of the Civil Code of Russia)

Problem: importing from abroad into the EAEU countries by importers of original goods, marked by the copyright holder's trademark, but without his permission, creates a conflict of interests of importers and right holders claiming absolute authority to control parallel import, and allows foreign suppliers to unfairly use the exclusive right to trademarks and limit the import of specific goods into the Eurasian market or implement a pricing policy of overpricing

Solution: protocol of changes to the Union Treaty, according to which the Eurasian intergovernmental council may introduce the international principle of exhaustion of law for certain types of goods in demand (which are not available or available in insufficient quantities or at inflated prices) with the consent of all member-states

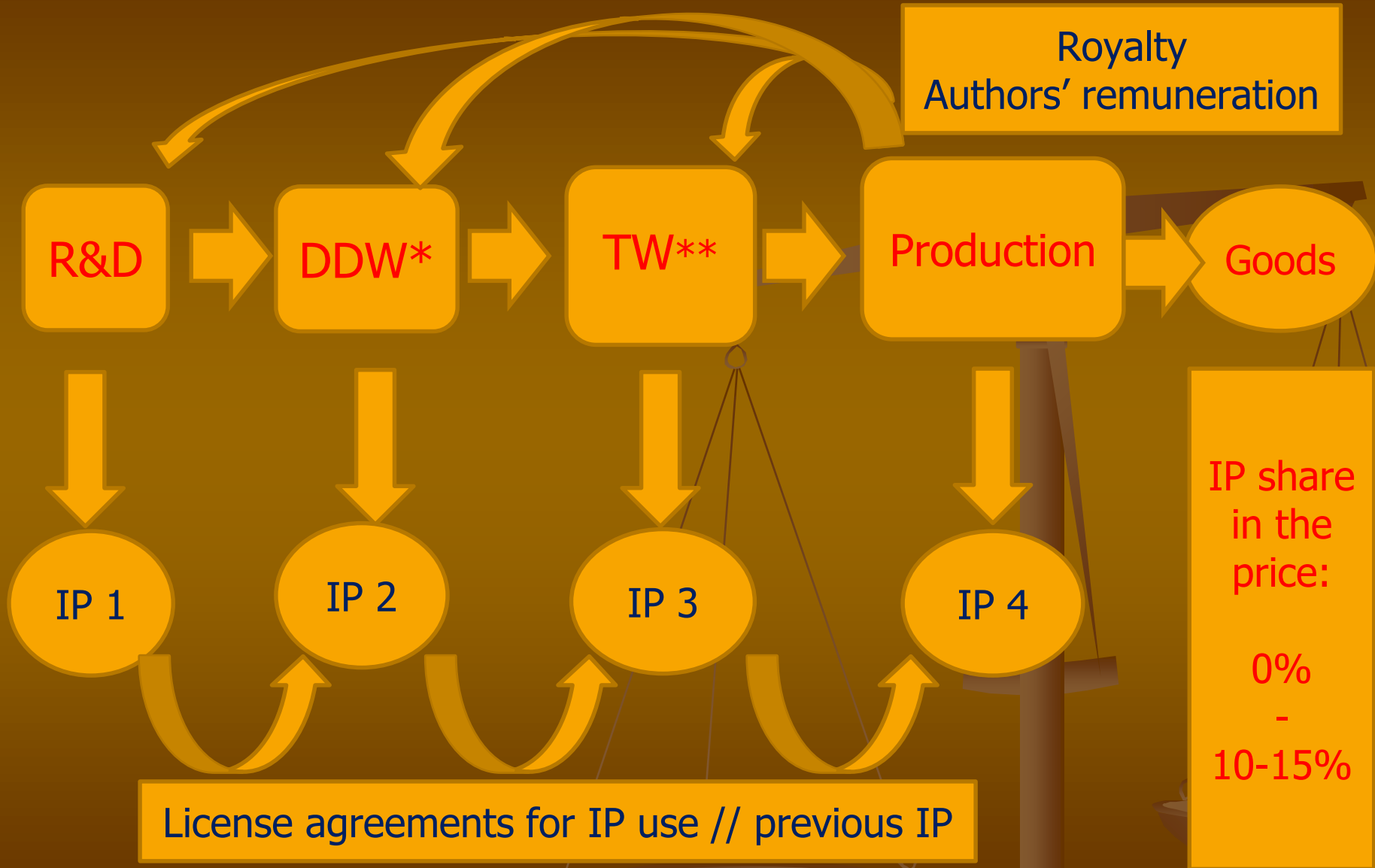
Ruling of the Constitutional Court as of February 13, 2018 No. 8-P

- use a differentiated approach regarding the responsibility of the importer;
- exclude cases of applying the same civil liability to the importer importing the original products without the consent of the copyright holder, and to the importer importing counterfeit products;
- destroy goods only if they are of inadequate quality

Competitiveness of IP: recommendation

- mending all interstate and national programs for the development of science and technology, digitalization and innovative development, acts determining publications in editions indexed in the Web of Science and Scopus, as key;
- publication activity can be attributed to the criteria and indicators of performance assessment only under the condition of preliminary examination of the IP on the criterion of economic expediency and information security, its' legal protection as an IP object;
- suppression of budgeting of these processes in the interests of foreign campaigns, as holders of BIG DATA;
- substantial adjustment of policies when choosing a method of legal protection (waiver of the policy "obtaining a patent for a sake of patent" in favor of objects of copyright and related rights, know-how) and the subsequent commercialization of rights to them;
- Attribution of **R&D** and intellectual property to the services sector is a major obstacle to the formation and development of IP market. A register of major obstacles (barriers, exemptions and restrictions) in the field of IP (at the international, regional and national levels), as well as road maps to solve them, including artificial intelligence systems, are required.

IP economy in R&D



* Design and development works (OKP - in Rus)

**Technological works

Competitiveness: IP regulation

Based on the law of information development (the higher the level of organization of social systems, the greater the role of self-regulation of these systems) in the transition to a digital economy in the context of global digitalization in order to ensure consistency in approaches when national legal systems approach each other, there can be distinguished three levels and the corresponding basic regulatory methods:

- high level of self-regulation (professional codes of conduct);
- average level of self-regulation (standards as “soft power” regulation mechanisms, where WIPO and ISO potential may be used;
- low level of self-regulation (regulatory acts prevail).


Competitiveness: commercialization of IP

Methods of IP commercialization:

- creation of value added (up to 10-15% of the price of products);
- means of additional capitalization of assets (through intangible assets - up to 50%);
- inclusion in the authorized capital of the company;
- merge of companies' assets;
- investment resource (loans secured by IP, bank guarantees);
- source of security for securities on stock exchanges (stocks and bonds, depositary receipts; investment units; clearing participation certificates)

International and intergovernmental standardization is an effective "soft power" regulator in the commercialization of intellectual property while preserving legal conflicts and the dominance of transnational corporations (including when capitalizing through intangible assets and intellectual property-backed securities, attracting investment, including intellectual property based lending, etc.).

«Intellectual Property»

- GOST R 55386 – 2012 IP. Terms and definitions
 - GOST R 55385 – 2012 IP. Scientific works
 - GOST R 55384 – 2012 IP. Scientific discoveries
 - GOST R 56823-2015 IP. ИС. Works for hire
 - GOST R 56824-2015 IP. Use of protected results of intellectual activity in the Internet
 - GOST R 56825-2015 IP. Management at the state academy of science
 - GOST R 56826-2015 IP. Customs protection
 - GOST R 58086-2018 IP. The distribution of intellectual property rights to the protected results of intellectual activity created and / or used during the performance of research, development and production works between customer, performer and author
 - GOST R 58233 - 2018 IP. Antitrust regulation and protection against unfair competition
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- GOST R 58347-2019 IP. Countering the spread of counterfeit and falsified products in the field of engineering. Methods and technologies of protection
- GOST R 58348-2019 IP. Countering the spread of counterfeit and falsified products in the field of engineering. Requirements for the processes of procurement, acceptance and disposal.
- GOST R «Intellectual property. Management in a credit institution»
- GOST R «Intellectual property. Stock market management»
- GOST R «Intellectual property. Intangible assets»
- GOST R «Intellectual property. Trademark use»

- «Intellectual Property. Terms and definitions»
- «Intellectual Property. Customs protection»
- «Intellectual Property. Antitrust regulation and protection against unfair competition»
- «Intellectual Property. Scientific works»
- «Intellectual Property. Scientific discoveries»
- «Intellectual Property. Works for hire»
- «Intellectual Property. Use of protected results of intellectual activity in the Internet»
- «Intellectual Property. Methodology and methods of measuring the counterfeit levels in different countries».

In the interests of preventing unfair competition under the guise of combating counterfeiting and forming a new, more rational international economic order, uniform transparent and generally accepted methodologies and methodologies for measuring counterfeit levels in different countries are needed, based on a clear regulatory classification of infringements and determination of its' exhaustive comparable national lists and uniform statistical records

WIPO: conclusions and recommendations



Legal protection: A register of the main obstacles (barriers, exemptions and restrictions) in the field of intellectual property (at the international, regional and national levels), as well as road maps for their solution, including artificial intelligence systems, are required.

Use and commercialization: transition from information indicators (number of publications, patents and patent applications) to the economy of intellectual property (creation of value added) is required, as well as international standardization as an effective “soft power” regulator in the commercialization of intellectual property and solving of problems (incl. «parallel import», assessment and measurement of counterfeit level in different countries);

Legal protection: Differences in the levels of administrative and criminal responsibility for violations in the field of intellectual Property under national legislation are critical and necessitate greater coordination in establishing and raising the level of minimum standards of legal Protection at the intergovernmental and international levels.

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- Services rendered by RSRIIP fully comply with the requirements of the quality management system ISO 9001-2015 (certificate reg. No. POCC RU.ИC11.K01245 valid till December 25, 2020)
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Do you agree?

We welcome you to cooperate with WIPO to ensure that national Wealth in the 21st century grows IP!