

The Influence Of International Legalnorms In The Field Of Intellectual Property On National Legislation

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Received: 25 Dec 2025 | Received Revised Version: 10 Jan 2026 | Accepted: 28 Jan 2026 | Published: 09 Feb 2026

Volume 08 Issue 02 2026 | Crossref DOI: 10.37547/tajpslc/Volume08Issue02-02

Abstract

The article examines the theoretical and legal aspects of the influence of international legal norms in the field of intellectual property on national legislation. It analyzes the main doctrines governing the relationship between international and domestic law, namely monism and dualism, as well as their evolution in the context of globalization and the development of the international trading system. Special attention is paid to the mechanisms for implementing international legal norms into national legal systems, including incorporation, transformation, adaptation, and unification. The author substantiates the importance of an effective domestic implementation mechanism for ensuring the fulfillment of states' international obligations in the field of intellectual property. The study concludes that further development of the theoretical and methodological framework for researching the implementation of international norms is essential for improving national legislation and strengthening the protection of intellectual property rights.

Keywords: International law, intellectual property, national legislation, implementation, monism, dualism, harmonization of law, unification, international treaties, legal regulation.

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Cite This Article: Nabiev Firuzjon Khamidovich. (2026). The Influence Of International Legalnorms In The Field Of Intellectual Property On National Legislation. The American Journal of Political Science Law and Criminology, 8(2), 5–8. <https://doi.org/10.37547/tajpslc/Volume08Issue02-02>

1. Introduction

The issue of the influence of international law in the field of intellectual property on national legislation is one of the central and most controversial in the theory of international law.

Having analyzed the works of such researchers as V.G. Butkevich, S.V. Chernichenko, R.M. Khizriev [1], we will draw attention to the fact that international and national law in the field of intellectual property, although they are structurally different systems of law, both have

a clearly expressed social character and express the current needs of society.

K. Bel- Velki notes that “There are several main reasons for the unification and harmonization of law, which, in particular, include:

- 1) the process of further globalization;
- 2) differences between national laws that result in additional costs when conducting cross-border transactions;

3) insufficiency of national law to effectively regulate cross-border relations;

4) the need of law enforcement agencies for more cross-border rules” [2].

Developing this idea of the author, we note the opinion of R.M. Khizriev , who in his work emphasized that “At the same time, in a number of cases, an international legal norm can also be an imperative prescription, although in general, in contrast to the norms of domestic law, international law is characterized by norms of a coordinating, rather than imperative-mandatory nature” [3]. We believe that this opinion of the author fully reflects the coordinating aspect of the international legal norm in the field of intellectual property.

Here we can agree with the opinion of A.S. Gaverdovsky , who noted that “For the most complete implementation of the possibilities laid down in legal norms, states can resort to the use of certain types of control, but subject to the mutual consent of the subjects of the legal relationship, recorded in an international agreement” [4].

E. Buscaglia argued the following: “The permeability of national borders to international trade and ideas has now increased to such a degree that it has forced national authorities to reconsider the legal basis for intellectual property rights. The Paris and Berne Conventions provided two fundamental doctrines as the legal basis for intellectual property rights. The doctrine known as 'territoriality' maintains that rights must be respected in accordance with the rules of each state. This legal doctrine of 'independence' establishes that the granting of property rights within one state does not confer the same rights on other states” [5].

A. Crawford explains the dualist view by further stating that: “When international law is applied in whole or in part in a national legal system, it is bound by the rules of the domestic law of that legal system. In the event of a conflict of rules between international and national law, the dualist would assume that the court of the state would apply the national law” [6].

“The monistic point of view implies that national and international law form one legal order, which should be considered interconnected and non-contradictory” [7].

M. Magallona argued that “Public international law and domestic law constitute a unified legal system. A unified legal system implies that "international law can be

applied directly within the national legal order. In particular, international law is directly enforceable in national courts without any need for incorporation into national law” [8].

However, not all legal systems are purely monistic or dualistic, as some legal systems display elements of both.

In our view, these two doctrines became irrelevant under the post-Uruguay Round order, which sought uniformity of laws as the ideal way to stimulate international trade. This new system established that the granting of intellectual property rights, such as patents, should be based on social norms, driven by the need for an exchange of benefits between society and the innovator. The innovator receives a monopoly return on investment, and society benefits from the gradual dissemination of knowledge.

When it comes to the specifics of the mechanism for implementing international law, one can agree with the opinion of R.A. Kalamkaryan , who asserts that “The mechanism for implementing international law norms governing intellectual property is a set of normative and organizational-legal means that are used by subjects of international law at the international and national levels in order to implement the norms. Organizational-legal means of ensuring the implementation of international law at the international level exist in certain forms, which can be classified into three groups: 1) international procedural legal means of implementing international law; 2) international institutional legal means of implementing international law; 3) international legal means of implementing international law applied by a state individually or jointly with other states parties to international treaties. The main methods of implementation are incorporation, general or particular reference, adaptation, transformation” [9].

A.S. Gaverdovsky asserts that “The concept of implementation is one of the most widespread theories of law, mediating a set of measures aimed at recognizing the legal force and organizational support for the implementation of international legal norms within a state” [10]. Indeed, implementation is a crucial component of the effectiveness of international and domestic law.

When considering the above definition in the context of the implementation of international intellectual property law, it should be noted that it does not encompass the entire spectrum of legal relations arising from the

implementation of these norms at the international level. This observation concerns primarily the role of the state as a subject of international law in this process.

D. Rauschnig, studying the issue of the application of international law norms in national legislation, points out that “there are conditions for direct application: 1) the norms of the treaty must be self-executing, 2) they must be current norms of international law” [11].

G.V. Ignatenko noted in his works that “The problem of the direct application of the provisions of international treaties is one of the most complex in the interaction of international and national law. In the theory of international law, special attention is paid to it. For a long time, there have been debates about which international treaties (their individual provisions) and under what conditions can be directly applied in the legal systems of states by judicial and other bodies in resolving specific cases” [12].

To give the norms of international law in the field of intellectual property the force of domestic action, such forms of implementation as incorporation, adaptation, transformation, unification, etc. are used.

U.M. Mamadamonov, examining this issue, wrote that “The domestic implementation mechanism represents the final process of implementing international legal norms into national legislation. The achievement of the final goal of implementing international legal norms into national legislation depends on an effective domestic mechanism. The effectiveness of the domestic mechanism is also based on the timely use of organizational and legal means existing in national legislation, during which certain legal relations are formed within the framework of the domestic legal order. The basis for the emergence of these legal relations are the international obligations assumed by the state as a subject of international law” [13].

Based on the opinions of the above-mentioned researchers, the following definition can be given: “The mechanism for implementing international legal norms in the field of intellectual property is a set of national legal and organizational means applied by a state party of international treaties in the field of intellectual property for the purpose of comprehensive, timely and complete implementation of the obligations adopted in accordance with these international treaties.”

Supporting the above positions, we believe that it is the development of a theoretical and methodological basis for studying the process of implementing international law norms in the field of intellectual property into national legislation that will comprehensively provide the basis for improving the mechanisms for implementing the above-mentioned norms.

In conclusion, we note that cooperation with international organizations in the field of intellectual property provides greater opportunities for strengthening intellectual property protection. The international trading system and the IP system serve as a key link for economic and social well-being and are integral elements of national and regional development strategies—joint efforts are essential to exploiting the opportunities offered by international trade. Once an arcane and technical topic, intellectual property has become a major subject of debate in international relations. Technological changes, including the digital revolution, economic globalization, and the emergence of a knowledge- and service-based economy, have compelled rights holders to seek greater regulatory harmonization and higher standards of protection for their rights worldwide.

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