Table of contents

Nota autorului	VII
List of commonly used abbreviations	IX
Introducere	1
Relația dintre dreptul proprietății intelectuale și dreptul european al drepturilor omului	1
Introduction	5
The relationship between Intellectual Property Rights Law and Human Rights Law	5
Intellectual Property Rights as understood by the present research_ Material Interests in Intellectual Property Rights as understood	
by the present research	10
Direct and indirect protection of the material interests in IPRs under the ECHR	12
Methodology	13
Sources, authorities and miscellanea	19
Structure, summary of arguments and novelty of the present research	22
Part I	
Direct Protection of Material Interests in Intellectual Property	
Rights under the European Convention on Human Rights	25
Introduction to Part I	25
Chapter I.1.	
A Human Rights compatible justification for Intellectual	
Property Rights' protection	27
Introduction to Chapter I.1.	27

Subchapter I.1.1. A historic analysis of Human Rights compatible
justifications for Intellectual Property Rights protection 28
Introduction to Subchapter I.1.1 28
Section I.1.1.1. Earliest Intellectual Property Rights
manifestations until the invention of the printing press 29
Section I.1.2. Intellectual Property Rights' evolution after
the printing press35
Subsection I.1.2.1. The Venetian moment in Intellectual
Property Right history35
Subsection I.1.1.2.2. The British moment in Intellectual
Property Right history. The first British statutes on
Intellectual Property Rights38
Subsection I.1.1.2.3. The American experience of early
Intellectual Property protection46
Subsection I.1.1.2.4. French Intellectual Property law before
and after the French Revolution48
Section I.1.1.3. The international period in Intellectual Property
protection: The Paris and Berne Conventions54
Section I.1.1.4. he global and post-global period in Intellectual
Property protection. Global and European developments 59
Subsection I.1.1.4.1. Global developments59
Subsection I.1.1.4.2. European developments60
Conclusions to Subchapter I.1.163
Subchapter I.1.2. A property-centred paradigm of Intellectual Property
Rights as Human Rights. Philosophical and economic foundations of
Intellectual Property Protection66
Introduction to Subchapter I.1.266
Section I.1.2.1. Philosophical foundations of Intellectual
Property Rights under a property-based paradigm.
The Lockean labour theory68
Section I.1.2.2. Philosophical foundations of Intellectual
Property Rights under a property-based paradigm.
The German Idealist perspective74
Subsection I.1.2.2.1. Kant
Subsection I.1.2.2.2. Fichte
Subsection I.1.2.2.3. Hegel

TABLE OF CONTENTS 463

Conclusions to Section I.1.2.2.	8
Section I.1.2.3. Economic foundations of Intellectual	
Property Rights	8
Subsection I.1.2.3.1. An inherent tension between	
the public good and the monopoly aspect of Intellectual	
Property Rights	8
Subsection I.1.2.3.2. Economic justifications for stronger	
Intellectual Property protection	8
Conclusions to Subchapter I.1.2.	9
Conclusions to Chapter I.1	9
Chapter I.2. Direct protection of material interests in Intellectual	
Property Rights under Article 1 of Additional Protocol No. 1 to the	
Convention	9
Introduction to Chapter I.2.	9
Subchapter I.2.1. The specificity of the European Court of	
Human Rights' analysis on the applicability of Article 1	
of Additional Protocol No. 1 and its consequences	9
Introduction to Subchapter I.2.1.	9
Section I.2.1.1. The specificity of the European Court of Human	
Rights' analysis of "existing possessions" under Article 1 of	
Additional Protocol No. 1	9
Section I.2.1.2. The specificity of the European Court of Human	
Rights' analysis of "legitimate expectations" under Article 1	
of Additional Protocol No. 1	_ 10
Section I.2.1.3. The specificity of the European Court of Human	
Rights' standard of proof under Article 1 of Additional Protoc	ol
No. 1 and its applicability to both natural and legal persons	_ 10
Conclusions to Subchapter I.2.1.	_ 1.
Subchapter I.2.2. Material Interests in Intellectual Property	
Rights as "existing possessions" under Article 1 of	
Additional Protocol No. 1	_ 1
Introduction to Subchapter I.2.2.	
Section I.2.2.1. The earliest IPR cases to come before the	
Strasbourg institutions. Patents as protected by A1P1	_ 11

Section I.2.2.2. Further Intellectual Property Law-related
cases reach the European Commission of Human Rights.
Extensions beyond patents
Section I.2.2.3. Enter the European Court of Human Rights.
First judgments of the European Court of Human Rights
as regards IPR-related protection under Article 1 of Additional
Protocol No. 1 to the Convention
Subsection I.2.2.3.1. Dima v. Romania
Subsection I.2.2.3.2. Melnychuk v. Ukraine
Subsection I.2.2.3.3. Anheuser-Busch Inc. v. Portugal
Division I.2.2.3.3.1. The Facts in Anheuser-Busch Inc.
v. Portugal
Division I.2.2.3.3.2. The European Court of Human
Rights' Chamber Judgment in Anheuser-Busch
Inc. v. Portugal
Division I.2.2.3.3.3. The European Court of Human Rights'
Grand Chamber Judgment in Anheuser-Busch Inc.
v. Portugal
Division I.2.2.3.3.4. The Joint Concurring Opinion and
The Joint Dissenting Opinion in The European Court of
Human Rights' Grand Chamber Judgment in
Anheuser-Busch Inc. v. Portugal
Conclusions to Subsection I.2.2.3.3.
Conclusions to Section I.2.2.3.
Section I.2.2.4. Post-Anheuser-Busch Inc. v. Portugal
European Court of Human Rights Intellectual Property
Rights-related Cases
Subsection I.2.2.4.1. Bălan v. Moldova
Subsection I.2.2.4.2. Rapoš v. Slovakia
Conclusions to Section I.2.2.4.
Conclusions to Subchapter I.2.2.
Conclusions to Chapter I.2.
Conclusions to Part I

TABLE OF CONTENTS 465

Part II	
Indirect protection of Material Interests in Intellectual Property	
Rights under the European Convention on Human Rights	_ 209
Introduction to Part II	_ 209
Chapter II.1.	
Indirect protection of Material Interests in Intellectual	
Property Rights under Article 6 par. 1 of the Convention	_ 212
Introduction to Chapter II.1	
Subchapter II.1.1. Access to a court as regards Intellectual Property	
Rights and Article 6 par. 1 of the Convention	_ 217
Section II.1.1.1. Access to a court in Intellectual	
Property Rights cases. Timeframe	_ 218
Section II.1.1.2. Access to a court in Intellectual	
Property Rights cases. Jurisdiction	_ 227
Section II.1.1.3. Access to a court in Intellectual Property Rights	
cases. International Intellectual Property Judicial Bodies	_ 229
Subsection II.1.1.3.1. Pre-Bosphorus case law	_ 231
Subsection II.1.1.3.2. Bosphorus and post-Bosphorus	
case law	_ 239
Conclusions to Section II.1.1.3.	_ 249
Conclusions to Subchapter II.1.1.	_ 250
Subchapter II.1.2. Excessive duration in Intellectual Property	
Rights proceedings	_ 252
Section II.1.2.1. Excessive duration which does not affect	
Article 1 of Additional Protocol No. 1	_ 253
Section II.1.2.2. Excessive duration which can affect	 .
Article 1 of Additional Protocol No. 1	
Section II.1.2.3. Excessive duration and its effective remedies	
Conclusions to Subchapter II.1.2.	_ 279
Subchapter II.1.3. Other issues under Article 6 par. 1 which	
can affect Intellectual Property Rights	_ 283
Section II.1.3.1. Res Judicata and Intellectual Property Rights	283

Section II.1.3.2. Domestic Courts' Independence and	
Impartiality in Intellectual Property Law cases	_ 286
Section II.1.3.3. The Administration of Evidence and	
Orality in Intellectual Property Law cases	_ 290
Conclusions to Subchapter II.1.3.	
Conclusions to Chapter II.1.	
Chapter II.2.	
Indirect protection of Material Interests in Intellectual	
Property Rights through the Margin of Appreciation Doctrine	_ 299
Introduction to Chapter II.2	_ 299
Subchapter II.2.1. The jurisprudential origins of the Margin of	
Appreciation Doctrine in the European Court of Human	
Rights' case law. Justifications for its use	_ 303
Section II.2.1.1. The jurisprudential origins of the Margin of	
Appreciation Doctrine	_ 303
Subsection II.2.1.1.1. Initial application of the Margin of	
Appreciation Doctrine by the Strasbourg organs – origins	
in Article 15 of the Convention	_ 304
Subsection II.2.1.1.2. The Margin of Appreciation Doctrine,	
after the initial cases until 1979 – extension to further	
Articles of the Convention, after Article 15	_ 306
Subsection II.2.1.1.3. The Margin of Appreciation Doctrine,	
applied in cases pertaining to Article 1 of Additional	
Protocol No. 1 to the Convention	_ 315
Conclusions to Section II.2.1.1.	_ 317
Section II.2.1.2. Justifications for the Margin of	
Appreciation Doctrine	_ 318
Subsection II.2.1.2.1. Democratic legitimacy as a	
justification for the Margin of Appreciation Doctrine	_ 319
Subsection II.2.1.2.2. The existence of a European consensus	
as a justification for the margin of appreciation	_ 323
Division II.2.1.2.2.1. The European consensus – an	
often-used justification for the Margin of Appreciation	
Doctrine	323

TABLE OF CONTENTS 467

Division II.2.1.2.2.2. Determining a "consensus" – a	
heterogenous approach of the European Court	
of Human Rights	33
Conclusions to Subsection II.2.1.2.2.	
Subsection II.2.1.2.3. National expertise and competence	
as a justification for the margin of appreciation	33
Conclusions to Section II.2.1.2.	34
Conclusions to Subchapter II.2.1.	34
Subchapter II.2.2. The Margin of Appreciation Doctrine in	
Intellectual Property Law cases. Effective and potential use.	34
Section II.2.2.1. Effective and potential use of the margin of	
appreciation by the European Court of Human Rights in	
intellectual property law cases tied to Article 1 of Additional	
Protocol No. 1 to the Convention	34
Section II.2.2.2. Effective and potential use of the margin of	
appreciation by the European Court of Human Rights in	
intellectual property law cases tied to Article 6 par. 1 of the	
Convention	35
Section II.2.2.3. The Margin of Appreciation Doctrine – a method	ł
of balancing Intellectual Property Rights and other	
fundamental rights	36
Section II.2.2.4. Other potential uses of the Margin of	
Appreciation Doctrine in Intellectual Property Related	
cases	36
Conclusions to Subchapter II.2.2.	37
Conclusions to Chapter II.2.	37
Conclusions to Part II	. 38
General conclusions	_38
Concluzii generale	_ 39
Bibliography	40