

The Intellectual Property Exception in the 2019 Hague Judgments Convention in the Digital Economy: A Comparative Critical Study

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Abstract: The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters represents a landmark instrument in private international law, providing a multilateral framework for the cross-border recognition and enforcement of judgments. Nevertheless, its broad exclusion of intellectual property (IP) matters from the Convention’s substantive scope—as stipulated in Article 2(1)(m)—raises fundamental questions regarding whether the Convention, in its current form, adequately serves the interests of innovators, rights holders, and the global knowledge economy. This study critically examines the intellectual property exclusions contained in the 2019 Hague Judgments Convention, questioning whether these exclusions constitute systemic barriers to the effective protection of innovation in an increasingly borderless digital environment. Using a comparative doctrinal methodology, the study analyzes the Convention’s exclusionary framework alongside comparable instruments from the European Union, the United States, and the TRIPS Agreement. It argues that although the exclusion of intellectual property reflects legitimate concerns rooted in the territorial nature of IP rights and the risk of conflicting judgments, it simultaneously creates significant enforcement gaps that disadvantage rights holders, particularly within the context of the digital economy. The study concludes by proposing a gradual inclusion framework as a potential reform pathway, suggesting that a selective and context-sensitive approach to the enforcement of intellectual property judgments under the Convention would better reconcile the dual objectives of legal certainty and innovation promotion.

Keywords: 2019 Hague Judgments Convention; Intellectual Property; Recognition and Enforcement; Private International Law; Global Innovation; Territoriality; Digital Economy.

Introduction

Research Problem

The acceleration of global trade, digital interconnectedness, and knowledge-based economic activity has made the effective cross-border protection of intellectual property rights a matter of critical importance. Intellectual property—including patents, trademarks, copyrights, trade secrets, and related rights—constitutes the foundation of the modern innovation economy. However, the enforcement of intellectual property judgments across different legal systems remains characterized by substantial legal fragmentation and uncertainty. The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (hereinafter referred to as “the Convention” or the “2019 Hague Judgments Convention”) entered into force on 1 September 2023 and has emerged as a transformative instrument for simplifying the recognition and enforcement of judgments across national borders. Nevertheless, its categorical exclusion of intellectual property disputes from the Convention’s scope—primarily under Article 2(1)(m)—represents a significant limitation inherited from earlier unsuccessful attempts to establish a comprehensive international

judgments convention [1].

The exclusion of intellectual property matters is not merely a technical omission but rather a deliberate policy choice reflecting deep tensions between competing conceptions of intellectual property law. Intellectual property rights are territorially defined; a patent granted in one jurisdiction does not, as a matter of public international law, confer rights in another jurisdiction. This principle of territoriality, long embedded in the structure of international intellectual property law through instruments such as the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886), provides one of the principal justifications for excluding intellectual property from the Hague Convention. Nevertheless, critics increasingly argue that strict adherence to territoriality in the enforcement of intellectual property judgments has become outdated in an era where digital goods move instantaneously across borders, supply chains operate globally, and intellectual property infringements frequently occur simultaneously in multiple jurisdictions [2][3].

Accordingly, the central research question addressed by this study may be formulated as follows: Does the intellectual property exception in the 2019 Hague Judgments Convention constitute a necessary and proportionate response to legitimate concerns surrounding the cross-border enforcement of intellectual property rights, or does it represent an excessively cautious policy choice that undermines the Convention's utility for rights holders and, consequently, impedes the global protection of innovation? This question has practical implications for multinational corporations, individual creators, technology companies, pharmaceutical innovators, and all economic actors whose activities depend upon reliable cross-border intellectual property protection.

Research Objectives

This study seeks to achieve the following primary and secondary objectives:

1. To provide an in-depth analysis of the intellectual property exclusion provisions contained in the 2019 Hague Judgments Convention, with particular emphasis on Article 2(1)(m) and its relationship to the broader structural framework of the Convention.
2. To critically evaluate the doctrinal and policy justifications advanced in support of the intellectual property exception and assess their persuasiveness in light of contemporary developments in digital commerce and cross-border intellectual property enforcement.
3. To conduct a comparative analysis of how analogous instruments—particularly the Brussels I Recast Regulation, the TRIPS Agreement, and relevant bilateral and regional enforcement frameworks—address the cross-border enforcement of intellectual property judgments, with a view to identifying models that may inform future reform of the Hague Convention.
4. To examine available judicial precedents concerning the recognition and enforcement of cross-border intellectual property judgments and evaluate the practical enforcement challenges that arise in the absence of a comprehensive multilateral framework.
5. To develop an analytical assessment of the intellectual property exclusion and propose a gradual inclusion framework as a constructive contribution to ongoing international negotiations and academic discourse.

Research Hypothesis

This study is based on the central hypothesis that the intellectual property exception in the 2019 Hague Judgments Convention, although grounded in legitimate concerns regarding territoriality and judicial consistency, is excessively broad in its current formulation and creates systemic enforcement deficiencies that disproportionately affect rights holders operating within transnational digital and knowledge-based environments. A more nuanced approach to intellectual property inclusion—one that differentiates among categories of intellectual property rights, procedural contexts, and the nature of the underlying dispute—would better serve the Convention's overarching objectives of enhancing access to justice and promoting legal certainty in international civil and commercial matters.

This hypothesis does not assume that all intellectual property matters should be incorporated into the Convention without qualification. Rather, it advances the more refined proposition that the current blanket exclusion constitutes a form of excessive regulatory caution that ultimately produces greater harm than the problems it seeks to prevent [4][5].

Reasons for Selecting the Topic

The selection of this research topic is based on several interrelated academic and practical considerations:

First, the 2019 Hague Judgments Convention entered into force in September 2023, marking a historically significant development in private international law. Despite its importance, scholarly studies specifically addressing its intellectual property exclusion provisions remain relatively limited. This research seeks to contribute to filling this gap at a time when the Convention's practical implications are beginning to emerge for legal practitioners and rights holders alike.

Second, the rapid growth of the digital economy has rendered intellectual property enforcement increasingly transnational in nature. Disputes involving streaming platforms, software licensing, online patent infringement, and cross-border trade secret misappropriation require legal frameworks capable of operating efficiently and transparently across national boundaries. Consequently, the adequacy of the 2019 Convention in addressing these challenges is a matter of pressing practical significance.

Third, the topic lies at the intersection of two of the most dynamic fields of contemporary international law—private international law and intellectual property law—thereby necessitating an interdisciplinary analysis grounded in both theoretical and comparative methodologies.

Fourth, from a legal policy perspective, the question of whether multilateral enforcement frameworks promote or hinder innovation carries profound implications for global development, access to technology, and the incentive structures that support creative and innovative activity worldwide [6].

Methodology

This study adopts both analytical and comparative methodologies. It begins with an examination of the text of the 2019 Hague Judgments Convention, its official Explanatory Report, and its preparatory works, which together provide the interpretative foundation for a critical evaluation of the intellectual property exclusion clause. This analysis is supplemented by a systematic examination of comparable international instruments, including the Brussels I Recast Regulation (EU Regulation No. 1215/2012), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994), the European Patent Convention (1973), and relevant instruments developed under the auspices of the World Intellectual Property Organization (WIPO), in order to situate the Convention's approach within a broader comparative framework. The study also considers relevant judicial decisions from both common law and civil law jurisdictions concerning the recognition and enforcement of cross-border intellectual property judgments, drawing upon jurisprudence from the United States, the United Kingdom, the European Union, and other pertinent legal systems.

Results and Discussion

Chapter One

The Historical Development and General Framework of the 2019 Hague Judgments Convention

The provisions of the 2019 Hague Judgments Convention and its legislative objectives cannot be fully understood without reference to the historical context in which the Convention emerged. The Convention is the culmination of a lengthy negotiating process that extended over several decades within the framework of the Hague Conference on Private International Law. Accordingly, this chapter examines, in its first section, the negotiations that ultimately led to the adoption of the

Convention. The second section analyzes the Convention’s general legislative structure and principal provisions, while the third section discusses its entry into force and the current position of states regarding ratification.

Section One

The Negotiating Process Toward the Adoption of a Multilateral Judgments Convention

The 2019 Hague Judgments Convention did not emerge in an institutional vacuum. Rather, it represents the outcome of more than two decades of international negotiations conducted under the auspices of the Hague Conference on Private International Law. Prior efforts achieved only partial success through the adoption of the 2005 Hague Convention on Choice of Court Agreements. Attempts to establish a comprehensive multilateral instrument governing both jurisdiction and the recognition and enforcement of foreign judgments—an initiative strongly supported by the United States during the 1990s—repeatedly failed because of disagreements concerning intellectual property and other contentious issues [7]. The collapse of the broader Jurisdiction and Judgments Project in the early 2000s was largely attributable to fundamental differences between the principal negotiating parties, particularly the United States and the European Union, regarding the treatment of intellectual property disputes and defamation claims.

The revived project that eventually resulted in the 2019 Convention adopted a more modest approach, commonly referred to as a “judgments-only convention.” Instead of attempting to harmonize jurisdictional rules, it focused exclusively on the subsequent question of when courts in one Contracting State are required to recognize and enforce judgments rendered by courts of another Contracting State. This strategic adjustment facilitated broader consensus among states; however, the price of such consensus was a significantly narrower scope that excluded numerous categories of disputes, including intellectual property matters, in order to accommodate the diverse legal traditions and economic interests of participating states [8].

The Convention was adopted on 2 July 2019 and opened for signature. Following ratification by Ukraine and accession by the European Union, it entered into force on 1 September 2023 between the EU Member States and Ukraine. Consequently, it became the first general multilateral convention on judgments in history to satisfy the minimum participation requirements necessary for entry into force. As of the time of writing, several additional states are engaged in ratification processes, and the ultimate scope and impact of the Convention will depend significantly on the decisions of major legal and economic powers, including the United States, China, Japan, and the United Kingdom [9].

Section Two

The General Legislative Structure of the Convention

The Convention is built upon a relatively clear and coherent structural framework. Article 4 establishes the general rule requiring the recognition and enforcement of judgments rendered in one Contracting State by other Contracting States. Articles 5 and 6 respectively set forth the jurisdictional criteria—commonly referred to as the Convention’s “jurisdictional filters”—that must be satisfied for recognition, as well as the exclusive jurisdictional grounds that impose mandatory recognition obligations. Article 7 specifies the grounds upon which recognition or enforcement may be refused, including public policy considerations, violations of procedural fairness, fraud, and conflicting judgments. The Convention adopts a relatively liberal approach toward the review of foreign judgments, generally excluding substantive reconsideration by the recognizing court, a feature that is essential to its effectiveness as an enforcement instrument. Articles 8 through 14 address procedural requirements, severability of judgments, and cost-related orders [10].

The scope of the Convention is largely defined by what it excludes. Article 2 contains an extensive list of excluded matters reflecting difficult diplomatic compromises. These exclusions encompass revenue and customs matters, the legal status of natural persons, family law, insolvency proceedings, maritime issues, nuclear damage, and—most importantly for the purposes of this study—intellectual property. The breadth of the intellectual property exclusion, coupled with the limited exceptions

thereto, distinguishes the Convention from certain regional instruments and raises the central question examined in this research.

Chapter Two

Intellectual Property within the Framework of Private International Law

Intellectual property rights constitute one of the most complex areas of private international law due to their close association with the principle of territoriality, which geographically limits the scope of their legal protection. Against this backdrop, this chapter examines the fundamental legal issues surrounding intellectual property rights in the international arena. The first section analyzes the principle of territoriality and its legal implications, the second explores existing international mechanisms for the enforcement of intellectual property rights, and the third discusses the challenges posed by the digital economy and their impact on contemporary enforcement systems.

Section One

The Principle of Territoriality and Its Legal Implications

To understand the rationale behind the exclusion of intellectual property matters from the 2019 Hague Judgments Convention, it is essential to examine the foundational principle governing international intellectual property law: the principle of territoriality. Under this principle, intellectual property rights are created by and derive their legal force from the law of the state granting them. Accordingly, such rights are effective only within the territory of that state. A patent granted by the European Patent Office, for example, confers rights under the national laws of the contracting states in which it has been validated. Similarly, copyrights arising under French law constitute French legal rights, while a trademark registered in the United Kingdom grants protection against infringement within the jurisdiction of the United Kingdom. As Dinwoodie observes, “the territorial framing of intellectual property rights is not merely a technical legal construct but reflects fundamental policy choices concerning the scope and nature of monopoly privileges that states are willing to confer upon creators and inventors, choices that may legitimately differ among political and economic systems.”

The principle of territoriality has profound implications for the cross-border enforcement of intellectual property judgments. A judgment rendered by a United States court finding a defendant liable for infringement of a U.S. patent says nothing, as a matter of patent law, about the defendant’s conduct with respect to patents in other jurisdictions. Likewise, a French court judgment determining that particular conduct does not infringe a French trademark offers no guidance as to whether the same conduct would constitute infringement under German or Spanish law. Historically, the multiplicity of independent intellectual property rights, each governed by the law of its country of origin and adjudicated by the courts of that country, has justified a cautious approach toward the automatic recognition of foreign intellectual property judgments.

Nevertheless, the strict territorial model of intellectual property adjudication is increasingly challenged by the realities of the global digital economy. When a software company operating from Silicon Valley licenses its products worldwide, when an e-commerce platform hosts infringing listings accessible from every corner of the globe, or when a pharmaceutical company manufactures and distributes products across multiple markets, determining the location of infringement and the appropriate forum becomes exceptionally complex. Under a rigid territorial framework, rights holders may be compelled to initiate parallel litigation in dozens of jurisdictions—a process that is costly, time-consuming, and highly likely to produce inconsistent outcomes.

Section Two

Existing International Mechanisms for the Enforcement of Intellectual Property Rights

Prior to the adoption of the 2019 Hague Judgments Convention, the international framework governing intellectual property enforcement consisted primarily of substantive harmonization treaties and, to a lesser extent, bilateral and regional instruments addressing issues of jurisdiction and enforcement. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),

administered by the World Trade Organization, establishes minimum standards for the protection and enforcement of intellectual property rights that WTO members are obligated to implement within their domestic legal systems. Article 41 of the TRIPS Agreement requires members to ensure that enforcement procedures are available under national law so as to permit effective action against infringement, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future violations. However, TRIPS does not directly regulate the recognition or enforcement of foreign intellectual property judgments. It is fundamentally a substantive minimum-standards instrument rather than a private international law convention.

Within the European Union, the Brussels I Recast Regulation (Regulation (EU) No. 1215/2012) provides a sophisticated framework for the recognition and enforcement of judgments in civil and commercial matters among EU Member States. Although the Regulation excludes certain categories of disputes, including insolvency and social security matters, it does not generally exclude intellectual property disputes. This distinction represents one of the most significant differences between the Brussels regime and the 2019 Hague Judgments Convention. Under the Brussels I Recast framework, judgments rendered by courts of one Member State in intellectual property disputes may, in principle, be recognized and enforced throughout other Member States, subject to general procedural requirements and limited grounds for refusal. Article 24(4) of the Regulation establishes exclusive jurisdiction for proceedings concerned with the registration or validity of patents, trademarks, and other registered intellectual property rights. Nevertheless, this provision primarily concerns jurisdiction rather than recognition and enforcement, and its precise scope has generated considerable interpretative debate before the Court of Justice of the European Union.

The Brussels I Recast Regulation therefore serves as a practical model demonstrating the feasibility of recognizing and enforcing intellectual property judgments within a sufficiently integrated legal and economic area. It illustrates that, at least within a regional framework characterized by a high degree of legal harmonization and mutual trust, cross-border recognition of intellectual property judgments is both workable and beneficial. The broader question remains whether similar arrangements can be achieved at the multilateral level and whether the 2019 Hague Judgments Convention represents a missed opportunity or a necessary transitional step toward such a goal.

Section Three

Challenges of the Digital Economy and Their Impact on the Enforcement of Territorial Rights

The emergence of the digital economy has placed unprecedented pressure on the territorial model of intellectual property enforcement. By its very nature, the Internet operates without regard to national borders. A website accessible worldwide may simultaneously infringe copyrights in dozens of countries; a social media platform may facilitate the sale of counterfeit goods to consumers across the globe; and a streaming service may distribute protected content without authorization in every market in which it operates. The economic consequences of online intellectual property infringement are estimated to amount to hundreds of billions of dollars annually, with particularly significant effects on the creative industries, pharmaceutical sector, and technology companies [11].

The traditional response to this challenge—requiring rights holders to initiate separate proceedings in every jurisdiction where infringement occurs—is no longer adequate. Although such an approach may be formally consistent with the principle of territoriality, it often produces outcomes that are practically unattainable except for the largest and most financially powerful rights holders. Individual creators, small and medium-sized enterprises, and innovators in developing economies are especially disadvantaged by the fragmentation of the enforcement environment [12].

A multilateral judgments convention providing meaningful coverage of intellectual property disputes could significantly reduce enforcement costs, improve access to justice, and enhance the predictability required by innovation-intensive businesses. From this perspective, the failure of the 2019 Hague Judgments Convention to provide such coverage constitutes one of its most significant shortcomings. While the Convention represents a major achievement in the field of private international law, its exclusion of intellectual property disputes limits its ability to respond effectively to the realities of the

contemporary digital economy and the increasingly transnational nature of innovation and intellectual property protection.

Chapter Three

The Intellectual Property Exception under Article 2(1)(m): A Critical Analytical Study

The intellectual property exception contained in Article 2(1)(m) of the 2019 Hague Judgments Convention is among the most controversial provisions of the Convention from both doctrinal and practical perspectives. Many scholars regard it as a retreat from the principle of comprehensiveness upon which the Convention was originally envisioned. Accordingly, this chapter is devoted to a critical analysis of the exception. The first section examines the content of Article 2(1)(m) and its scope of application. The second section analyzes the principal arguments advanced in support of excluding intellectual property disputes from the Convention. The third section critically evaluates these justifications and highlights their shortcomings, while the fourth section considers the scope and limitations of the exception in the context of contractual intellectual property disputes.

Section One

The Content of Article 2(1)(m) and Its Scope of Application

Article 2(1)(m) of the 2019 Hague Judgments Convention establishes the exclusion of intellectual property matters from the Convention's scope. Although the wording of the provision appears straightforward, its practical application raises significant interpretative challenges. The official Explanatory Report prepared by Professor Francisco Garcimartín and Professor Geneviève Saumier (the Garcimartín–Saumier Report) provides authoritative guidance regarding both the scope and rationale of the intellectual property exception and remains the principal interpretative source for understanding the provision.

Under the Convention's exclusionary framework, proceedings primarily concerned with the validity, subsistence, registration, ownership, or infringement of intellectual property rights fall outside the Convention's recognition and enforcement regime. Consequently, a foreign judgment establishing patent infringement, invalidating a trademark registration, or awarding damages for copyright infringement does not benefit from automatic recognition and enforcement under the Convention. Rights holders seeking cross-border enforcement of such judgments must instead rely upon domestic law, bilateral treaties, or regional instruments, thereby operating within a fragmented and often uncertain legal environment.

It is important, however, to recognize that the exclusion is not absolute. Where an intellectual property issue arises merely as an incidental question within proceedings that are primarily contractual or otherwise fall within the Convention's scope, the resulting judgment may still qualify for recognition and enforcement under the Convention. This "incidental issue" exception possesses practical significance, although its scope remains considerably narrower than many intellectual property rights holders would prefer.

Section Two

Arguments Supporting the Exclusion of Intellectual Property Disputes

The diplomatic history underlying the exclusion of intellectual property disputes reveals several distinct justifications advanced by negotiating states.

First, and most importantly, the territorial nature of intellectual property rights was relied upon as a primary justification for exclusion. Since intellectual property rights derive their existence and scope from national law, it was argued that courts in the recognizing state should not be required to enforce foreign judgments determining the validity, scope, or infringement of rights that exist solely under the law of another jurisdiction. The concern was that recognition obligations could effectively compel courts to apply—or at least accept the application of—foreign intellectual property laws in circumstances where domestic courts might have reached different conclusions under their own legal systems.

Second, concerns were raised regarding the possibility of forum shopping in intellectual property litigation. If rights holders were able to obtain judgments in jurisdictions perceived as particularly favorable to their interests and subsequently enforce those judgments globally through a multilateral convention, the incentive structures underpinning international intellectual property law could become distorted. Defendants might find themselves deprived of defenses or limitations available under the law of the enforcing state. The exclusion was therefore intended, at least in part, to preserve each state's ability to maintain its own balance between protecting intellectual property rights and safeguarding access to the public domain.

Third, and perhaps most significantly from a practical standpoint, the exclusion reflected the inability of negotiating states to achieve consensus regarding the treatment of intellectual property within the limited timeframe and political mandate of the renewed Judgments Project. States disagreed on fundamental issues, including whether validity defenses raised incidentally should fall within exclusive jurisdiction provisions, how multiple parallel intellectual property rights existing in different jurisdictions should be addressed, and the appropriate treatment of intellectual property licensing disputes. These issues proved too complex to resolve within the available negotiating framework. Consequently, the exclusion represented, to some extent, a pragmatic acknowledgment of the limits of political feasibility rather than a fully developed policy position.

Section Three

Critical Evaluation of the Justifications and Their Shortcomings

Although each of the foregoing justifications possesses a degree of legitimacy, none is immune from substantial criticism.

The territoriality argument arguably proves more than it intends. If the territorial nature of intellectual property rights were sufficient to categorically prevent recognition of foreign intellectual property judgments, the same logic could extend to numerous other fields—including company law, property law, and regulatory matters—where legal rights are similarly territorially defined. Yet foreign judgments in such areas are frequently recognized and enforced across jurisdictions. Moreover, as discussed earlier, the Brussels I Recast regime has successfully accommodated intellectual property disputes without producing the severe consequences predicted by proponents of strict territoriality. Accordingly, territoriality may justify caution in expanding recognition obligations, but it does not provide a compelling rationale for complete exclusion.

Likewise, concerns regarding forum shopping, while genuine, are often overstated as a justification for a blanket exclusion. Strategic forum selection exists throughout international civil litigation and is not unique to intellectual property disputes. The more appropriate solution is not the exclusion of entire substantive fields but rather the incorporation of adequate safeguards within the recognition framework itself. Such safeguards may include robust public policy defenses, minimum standards of procedural fairness, and mechanisms addressing conflicting judgments. Significantly, the 2019 Convention already contains these protections in Article 7. Therefore, concerns regarding forum shopping could have been addressed through more nuanced drafting rather than by adopting an absolute exclusion.

The practical explanation—that the exclusion merely reflects the limits of political negotiation—is perhaps the most candid, yet it is also the least satisfactory from a normative perspective. While it explains why the exclusion emerged during negotiations, it does not justify the exclusion as a matter of optimal legal design. Indeed, acknowledging that the exclusion was adopted as a compromise necessitated by political realities strengthens the argument for reconsidering it during future reviews of the Convention. The intellectual challenge of designing a workable framework for the recognition and enforcement of cross-border intellectual property judgments is neither impossible nor politically utopian. Rather, it requires sustained engagement with the specific characteristics that distinguish intellectual property from other civil and commercial matters, followed by carefully tailored legal responses rather than a broad and indiscriminate exclusion.

Section Four

The Scope and Limitations of the Contractual Intellectual Property Exception

The intellectual property exception under the Convention is not absolute. Where an intellectual property issue arises incidentally in proceedings primarily concerned with a contractual matter—for example, when a party to a licensing agreement brings a breach of contract claim that requires the court to determine whether certain uses fall within the scope of the license—the resulting judgment may fall within the Convention if the contractual issue constitutes the principal subject matter of the proceedings. Academic commentary and the official Explanatory Report recognize this “incidental intellectual property issue” exception, thereby allowing the Convention to operate in certain intellectual property licensing disputes. Nevertheless, its practical scope remains limited because the intellectual property issue must genuinely be incidental to the principal contractual claim, and because it is often difficult to draw principled distinctions between disputes that are “primarily contractual” and those that are “primarily intellectual property” in complex commercial litigation.

From the perspective of individual creators, small businesses, and non-commercial rights holders, this contractual exception is particularly inadequate. Copyright owners who have not entered into formal licensing agreements but nevertheless seek to enforce their rights against unauthorized reproduction or distribution—the most common scenario in copyright infringement litigation—derive no benefit from the contractual exception. Similarly, patent holders pursuing claims against independent infringers with whom they have no contractual relationship are entirely excluded from the Convention’s framework. Consequently, the Convention’s limited coverage of intellectual property disputes tends to favor large commercial entities engaged in formal licensing relationships while offering comparatively little assistance to categories of rights holders for whom effective enforcement is often most critical.

Chapter Four

Judicial Approaches to the Recognition of Cross-Border Intellectual Property Judgments

In the absence of a unified international framework governing the enforcement of intellectual property judgments, national courts have assumed a central role in addressing the challenges associated with recognizing such judgments across borders. Their jurisprudence has contributed to the development of independent legal principles that merit careful examination. This chapter surveys comparative judicial developments by examining, first, the evolution of case law in United States courts; second, prevailing trends within the courts of the European Union; and third, the judicial position of the United Kingdom following its withdrawal from the European Union and the transformations that have resulted from that development.

Section One

Judicial Developments in United States Courts

Given the recent entry into force of the 2019 Hague Judgments Convention, there is currently no significant body of case law specifically applying the Convention’s intellectual property provisions. Nevertheless, the broader jurisprudence concerning the recognition and enforcement of cross-border intellectual property judgments—developed under domestic conflict-of-laws rules, bilateral treaties, and regional instruments—provides valuable empirical insight into the practical consequences of the enforcement gaps maintained by the Convention. In the United States, recognition and enforcement of foreign intellectual property judgments are governed by a combination of state common law principles and federal legal frameworks, resulting in considerable variation among jurisdictions.

One of the most influential cases in this context is *Lucasfilm Ltd. v. Ainsworth* (2011), decided by the Supreme Court of the United Kingdom and discussed further below. Although the case primarily concerned jurisdiction rather than recognition and enforcement, it illustrates the difficulties generated by the territorial model of intellectual property adjudication and the historical reluctance of courts to engage with foreign intellectual property rights. Within the United States, the decision of the Second Circuit in *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82 (2d Cir. 1998), established important principles regarding choice of law in international copyright disputes. The court

held that ownership should be determined according to the law of the country of origin, whereas infringement should be assessed under the law of the country where protection is sought. Although influential, this framework operates at the level of choice of law rather than recognition of judgments and demonstrates the complexity courts encounter even in relatively routine transnational intellectual property disputes.

More recent American decisions reveal an increasing willingness to engage with cross-border intellectual property enforcement issues despite the absence of a comprehensive legislative framework. In *Spanski Enterprises, Inc. v. Telewizja Polska, S.A.*, 883 F.3d 904 (D.C. Cir. 2018), the court considered the extraterritorial application of U.S. copyright law in the context of internet streaming and concluded that access to infringing content from within the United States could trigger liability under U.S. copyright law even where the infringing server was located abroad. While the case focused on the extraterritorial application of domestic law rather than the recognition of foreign judgments, it reflects a broader judicial trend toward adapting traditional territorial frameworks to the realities of the global digital economy. This trend provides support for the proposition that cross-border recognition of intellectual property judgments is both practically feasible and normatively desirable.

Section Two

Judicial Trends in the Courts of the European Union

Within the European Union, the jurisprudence of the Court of Justice of the European Union (CJEU) under the Brussels I Regulation and its predecessor instruments constitutes the richest body of case law concerning cross-border jurisdiction and recognition in intellectual property disputes. In its landmark judgment in *GAT v. LuK* (Case C-4/03, 2006), the Court interpreted the exclusive jurisdiction provision contained in Article 22(4) of the Brussels I Regulation (now Article 24(4) of the Brussels I Recast Regulation) concerning proceedings related to the validity of registered intellectual property rights. The Court held that exclusive jurisdiction applies not only when validity is raised as the principal claim but also when it is invoked as a defense. This ruling had significant practical implications because it meant that infringement proceedings initiated outside the state of registration could be suspended or terminated whenever a validity defense was raised. The result was the fragmentation of multinational intellectual property litigation across multiple jurisdictions. The *GAT v. LuK* doctrine has been widely criticized in academic literature as economically inefficient and doctrinally unconvincing.

Subsequently, the decision in *Roche Nederland BV v. Primus* (Case C-539/03, 2006) further complicated matters. The Court ruled that the procedural mechanism allowing the consolidation of claims against related defendants could not be used to combine infringement claims concerning the same European patent in multiple countries because each national patent required a separate legal assessment governed by a different national law. The combined effect of *GAT v. LuK* and *Roche Nederland* rendered efficient Europe-wide patent litigation extremely difficult, forcing patent holders to pursue parallel proceedings in multiple Member States—the very outcome the Brussels framework sought to avoid. Although subsequent legislative and judicial developments have mitigated some of these difficulties, the case law of the Court of Justice vividly illustrates the challenges that arise at the intersection of intellectual property law and private international law and provides important lessons for the design of any future international intellectual property enforcement regime.

The later decision in *Pinckney v. KDG Mediatech AG* (Case C-170/12, 2013) addressed jurisdiction in online copyright infringement disputes. The Court held that courts in a Member State where copyrighted content is accessible online possess jurisdiction to hear claims for damages suffered within that state. Although the judgment expanded territorial jurisdiction in copyright matters, it also generated concerns regarding fragmented litigation and the possibility of conflicting judgments. These concerns underscore the need for effective mechanisms for the recognition and enforcement of judgments—mechanisms that the 2019 Hague Judgments Convention, in its current form, is unable to provide in the intellectual property context.

Section Three

The Judicial Position of the United Kingdom in the Post-Brexit Era

The withdrawal of the United Kingdom from the European Union removed it from the framework of the Brussels I Recast Regulation and created significant uncertainty concerning the recognition and enforcement of British intellectual property judgments within the European Union and vice versa. The decision of the UK Supreme Court in *Lucasfilm Ltd. v. Ainsworth* [2011] UKSC 39 remains a landmark authority in the field of international intellectual property jurisdiction. In that case, the Supreme Court departed from the traditional common law rule based on the doctrine of “double actionability” and held that British courts possessed jurisdiction over claims involving foreign copyright infringement, specifically infringement of United States copyrights. In doing so, the Court overturned the earlier Court of Appeal decision, which had treated such claims as non-justiciable because they required the application of foreign intellectual property law. The Supreme Court emphasized considerations of practical justice and access to courts, reasoning that rigid adherence to the traditional rule produced arbitrary and unfair outcomes in the context of global creative industries. The *Lucasfilm* decision represents a significant departure from strict territorial thinking and provides judicial support for a more flexible and pluralistic approach to transnational intellectual property disputes, an approach that aligns closely with the reform proposals advanced in this study.

Following Brexit, the United Kingdom ceased to participate in the Brussels I Recast framework and has not yet become a party to either the 2019 Hague Judgments Convention or the 2005 Hague Choice of Court Convention in the same integrated manner as EU Member States. The resulting enforcement gap in cross-border litigation between the United Kingdom and the European Union—which encompasses a substantial volume of intellectual property disputes given the United Kingdom’s role as a center for creative industries, technology, and financial services—demonstrates the tangible costs associated with the absence of comprehensive multilateral recognition frameworks. This situation has renewed interest in the possibility of future UK participation in the 2019 Convention, and the treatment of intellectual property issues will undoubtedly constitute a critical aspect of any future accession negotiations.

Chapter Five

A Comparative Study of Regional and Bilateral Systems for the Cross-Border Enforcement of Intellectual Property Rights

The exclusion of intellectual property from the scope of the 2019 Hague Judgments Convention did not halt international efforts in this field. Rather, it encouraged states to seek regional and bilateral alternatives capable of filling the enforcement gap created by this exclusion. Accordingly, this chapter undertakes a systematic comparison of internationally adopted mechanisms for the cross-border enforcement of intellectual property rights. The first section examines the Brussels I Recast Regulation model and its operational mechanisms. The second analyzes the role of the TRIPS Agreement in substantive harmonization, while the third evaluates the effectiveness of bilateral and multilateral frameworks in achieving practical enforcement outcomes.

Section One

The Brussels I Recast Regulation Model

As discussed in the preceding chapters, the Brussels I Recast Regulation provides the most extensively tested regional framework for the recognition and enforcement of judgments in civil and commercial matters, including intellectual property disputes. The inclusion of intellectual property disputes within its scope—subject to the exclusive jurisdiction exception applicable to validity proceedings—offers a model of calibrated inclusion that may serve as a useful reference for reforming the Hague Convention. The Brussels framework demonstrates that the legal and practical challenges associated with the cross-border recognition of intellectual property judgments can be managed through clear jurisdictional rules, minimum standards of procedural fairness, and robust grounds for refusal. Its successful operation over more than five decades provides substantial empirical evidence that the

benefits of a comprehensive recognition framework outweigh the theoretical risks associated with enforcing foreign intellectual property judgments.

Nevertheless, the Brussels I Recast Regulation operates within a context of deep legal and institutional integration that does not exist at the global multilateral level. The European framework is supported by harmonized substantive intellectual property legislation, a supranational court possessing authority to interpret European Union law uniformly, and a high degree of mutual trust among Member States in their respective judicial systems. These conditions cannot simply be assumed in a global environment characterized by significant diversity in legal traditions, judicial development, and substantive intellectual property standards. Nonetheless, the European experience demonstrates the practical feasibility of cross-border intellectual property recognition and offers valuable institutional design features that could be adapted to a broader multilateral context.

Section Two

The TRIPS Agreement and Its Role in Substantive Harmonization

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered within the framework of the World Trade Organization, represents the most comprehensive effort to establish global minimum standards for intellectual property protection and enforcement. The Agreement sets binding minimum standards concerning the availability, scope, and enforcement of intellectual property rights, including patents, trademarks, copyrights, geographical indications, industrial designs, integrated circuit layouts, and trade secrets. Article 41 requires WTO Members to provide enforcement procedures that are fair, equitable, and not unnecessarily complicated or costly, while ensuring the availability of civil and administrative remedies, including injunctions, damages, and provisional measures. Article 50 further requires the availability of prompt provisional measures to prevent infringement. Collectively, these provisions establish a substantive baseline for intellectual property enforcement that, at least in principle, reduces the risk that foreign intellectual property judgments will be fundamentally inconsistent with the legal standards of the recognizing state.

Accordingly, TRIPS provides a useful foundation for a gradual approach to incorporating intellectual property matters into the Hague Convention. If recognition obligations were limited to judgments originating in TRIPS-compliant states—which include virtually all WTO Members—the recognizing state could have reasonable confidence that the judgment was rendered within a legal system satisfying internationally accepted minimum enforcement standards. Academic commentators have proposed this “TRIPS filter” approach as one possible mechanism for extending the Convention’s intellectual property coverage while managing concerns regarding inconsistent or substandard judgments.

Section Three

Bilateral and Multilateral Frameworks and Their Effectiveness

In the absence of a comprehensive multilateral framework, states have increasingly relied upon bilateral treaties and regional arrangements to address the enforcement of intellectual property rights across borders. The United States, for example, has negotiated numerous bilateral investment treaties and free trade agreements containing intellectual property chapters that address enforcement issues, although these instruments generally focus on substantive standards rather than mutual recognition of judgments. Likewise, the Trans-Pacific Partnership Agreement (later renegotiated as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) contains extensive intellectual property enforcement provisions but operates primarily at the level of substantive law rather than judgment recognition. Similarly, the European Union’s network of bilateral agreements with third countries—including the EU–Japan Economic Partnership Agreement and the EU–UK Trade and Cooperation Agreement—addresses substantive intellectual property standards without establishing comprehensive systems of mutual recognition and enforcement of intellectual property judgments [13].

The proliferation of bilateral and regional instruments in the field of intellectual property enforcement

reflects the recognized shortcomings of the current multilateral framework. At the same time, however, it contributes to the very fragmentation that a comprehensive multilateral convention is intended to eliminate. Each bilateral arrangement establishes its own rules, procedures, and exceptions, thereby creating a complex web of overlapping and potentially conflicting enforcement obligations. This complexity imposes significant practical burdens on rights holders seeking to enforce judgments across multiple jurisdictions. The 2019 Hague Judgments Convention presented an opportunity to rationalize and simplify this fragmented landscape; however, the exclusion of intellectual property disputes effectively forecloses that possibility, at least in the foreseeable future.

Chapter Six

Implications for Global Innovation: A Critical Analytical Perspective

The consequences of excluding intellectual property from the scope of the 2019 Hague Judgments Convention extend beyond purely legal considerations and directly affect the global innovation ecosystem and investment climate within the knowledge economy. This chapter concludes the study by providing a comprehensive critical assessment of these implications. The first section examines the relationship between legal certainty and innovation promotion. The second explores the disproportionate impact of the exclusion on innovators in developing countries. The third analyzes the legal dimensions of intellectual property disputes in the digital economy, while the fourth proposes a reform framework based on gradual inclusion.

Section One

The Impact of Legal Certainty on Innovation

The relationship between legal certainty in intellectual property enforcement and the level and nature of innovative activity is both complex and contested. Nevertheless, the majority of economic and empirical evidence supports the proposition that effective and predictable enforcement of intellectual property rights promotes innovation by ensuring that innovators can obtain economic returns on their investments in research, development, and creative activity [14]. Intellectual property protection provides the legal infrastructure through which innovation is transformed into market value, enabling innovators to attract capital investment, license technologies, and prevent free-riding by competitors. Where cross-border enforcement is uncertain, prohibitively expensive, or practically unavailable, incentives for innovation—particularly innovation intended for global commercialization—are correspondingly weakened.

The intellectual property exclusion contained in the 2019 Hague Judgments Convention has direct implications for this incentive structure. Consider, for example, a pharmaceutical company that has invested hundreds of millions of dollars in developing a new medicine and secured patent protection in multiple jurisdictions. If the company obtains a judgment in one major jurisdiction establishing patent infringement and awarding substantial damages, its inability to enforce that judgment in other jurisdictions where the infringing product is marketed significantly diminishes the deterrent effect of the ruling [15]. The infringer may continue exploiting the innovation in markets unaffected by the judgment, extracting economic value while bearing only a fraction of the legal consequences of infringement. This enforcement deficiency affects not only pharmaceutical corporations but also software developers, fashion designers, music producers, and biotechnology enterprises that depend heavily on intellectual property protection.

Section Two

The Disproportionate Impact on Innovators in Developing Countries

The intellectual property exclusion in the 2019 Hague Judgments Convention has a particularly severe and disproportionate impact on innovators and rights holders from developing economies who lack the resources necessary to pursue parallel litigation across multiple jurisdictions. A small technology company in a developing country that obtains a judgment for patent or copyright infringement in its home jurisdiction faces substantial practical obstacles in enforcing that judgment in major markets such as the United States, the European Union, or China. In the absence of a multilateral recognition

framework, the company must initiate separate proceedings in each target jurisdiction, comply with local procedural requirements, retain local legal counsel, and address substantive defenses raised under domestic law. The financial and procedural burdens associated with this process are prohibitive for most non-multinational rights holders.

This disparity significantly undermines the ability of the international intellectual property system to serve the interests of innovators in developing economies. Critics have long argued that the existing international intellectual property regime reflects the priorities of rights holders in developed countries more than the interests of innovators globally. The TRIPS Agreement, in particular, has been criticized for establishing minimum intellectual property standards that primarily benefit pharmaceutical, software, and entertainment industries concentrated in the United States, the European Union, and Japan while imposing compliance costs on developing countries that may exceed the benefits of participation. The exclusion of intellectual property from the Hague Convention perpetuates this imbalance by ensuring that the multilateral infrastructure necessary for cross-border enforcement remains unavailable, especially for rights holders who cannot afford bilateral diplomatic solutions or parallel litigation.

Section Three

The Legal Dimensions of Intellectual Property Disputes in the Digital Economy

The adequacy of the intellectual property exclusion in the 2019 Hague Judgments Convention must be evaluated in light of the unique challenges presented by the digital economy. Online infringements—whether involving copyrights, trademarks, software-implemented patents, or trade secrets—are characterized by instantaneous global reach, anonymity of infringers, ease of reproduction and distribution, and the difficulty of identifying the location of infringement according to traditional territorial concepts. In such circumstances, the territorial model of intellectual property enforcement reaches its limits, and the need for effective multilateral enforcement mechanisms becomes increasingly apparent.

Consider the situation of a music copyright owner whose works are distributed without authorization through a digital platform operating from a single jurisdiction but accessible worldwide. The rights holder may obtain an injunction and damages in one jurisdiction, yet in the absence of a multilateral recognition framework, the judgment has no direct effect in numerous other jurisdictions where the infringing distribution continues. The platform may simply relocate its operations to a jurisdiction where the judgment cannot be enforced. This scenario is not merely hypothetical; rather, it reflects well-documented patterns of enforcement avoidance identified in academic literature and increasingly recognized as a regulatory concern across multiple jurisdictions.

In this respect, the 2019 Hague Judgments Convention arguably missed a critical opportunity to address the enforcement challenges of the digital economy. The drafters were fully aware of the digital environment in which the Convention would operate, and the decision to maintain a broad intellectual property exclusion despite these challenges may be viewed as a regulatory shortcoming whose costs are likely to increase as the digital economy continues to expand. Any future revision of the Convention should place the challenges of digital-era intellectual property enforcement at the center of negotiations concerning the scope and content of new intellectual property provisions.

Section Four

Reform Proposals: Toward a Framework of Gradual Inclusion

Based on the critical analysis developed throughout this study, a framework of gradual inclusion is proposed as the most appropriate approach for reforming the intellectual property provisions of the 2019 Hague Judgments Convention. This framework is founded upon the premise that the binary choice between complete inclusion and complete exclusion of intellectual property disputes is a false dichotomy. A more nuanced approach that differentiates among categories of intellectual property rights, procedural contexts, and the nature of the underlying dispute would better serve the Convention's objectives.

The proposed framework consists of three levels. At the first level, judgments involving intellectual property matters arising incidentally in contractual or commercial disputes—such as licensing agreements, franchise arrangements, and technology transfer contracts—should be fully incorporated into the Convention’s scope. This represents the least controversial extension and reflects existing practice in many domestic and regional systems.

At the second level, judgments concerning copyright and related rights infringements, including online copyright violations, should be included subject to a set of minimum safeguards. These safeguards would require the rendering court to apply substantive law consistent with TRIPS standards, preserve a robust public policy defense for recognizing courts, and permit refusal of recognition where the judgment implicates issues concerning the validity or subsistence of copyright rights governed exclusively by the law of the recognizing state. This approach is supported by the relatively universal nature of copyright protection under the Berne Convention and TRIPS, as well as by the central importance of cross-border copyright enforcement in the digital era.

At the third level, judgments involving registered intellectual property rights—including patents, trademarks, and registered designs—should be brought within the Convention’s scope subject to stricter safeguards addressing concerns associated with the territorial character of registration-based rights. These safeguards would require that the infringed right be registered within the jurisdiction of the rendering court, permit refusal where recognition would conflict with validity determinations made by courts of the recognizing state, and ensure that recognition does not preclude subsequent validity challenges in the recognizing jurisdiction. Although more complex and politically sensitive, this level directly addresses the enforcement challenges faced by patent-intensive industries while preserving the essential features of the territorial model.

It is acknowledged that the gradual inclusion framework constitutes an ambitious reform agenda requiring sustained political commitment from the member states of the Hague Conference and a willingness to reopen negotiations concluded only after considerable diplomatic effort. Nevertheless, given the rapid evolution of the digital economy, the increasing strategic importance of intellectual property in national economic policies, and the evident shortcomings of existing bilateral and regional enforcement arrangements, the need for a coherent multilateral solution has become more compelling than ever. The 2019 Hague Judgments Convention provides both the institutional platform and the foundational framework upon which such a solution may ultimately be built.

Results and Discussion

The analysis conducted throughout this study demonstrates that the intellectual property exclusion contained in Article 2(1)(m) of the 2019 Hague Judgments Convention represents one of the Convention’s most significant limitations. Although the exclusion was adopted to accommodate differences among national legal systems and to preserve the territorial character of intellectual property rights, the research indicates that its broad scope substantially reduces the Convention’s effectiveness in facilitating the cross-border recognition and enforcement of judgments involving intellectual property disputes.

Conclusion

This study examined the intellectual property exception contained in the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters with the objective of evaluating whether the exclusion constitutes a necessary and proportionate response to the legitimate challenges associated with the cross-border enforcement of intellectual property rights or, alternatively, whether it represents an overly cautious policy choice that hinders the global protection of innovation. The analysis encompassed the historical background and institutional structure of the Convention, the foundational principle of territoriality in intellectual property law and its contemporary limitations, the text and scope of the intellectual property exclusion, relevant judicial developments, a comparative assessment of regional and bilateral instruments, and a critical evaluation of the exclusion’s implications for global innovation.

The principal finding of this research is that, although the exclusion of intellectual property is

grounded in legitimate concerns regarding territoriality, forum shopping, and the practical limits of international negotiations, it remains excessively broad in its current formulation. As a result, it creates a systemic enforcement deficiency that disproportionately disadvantages intellectual property rights holders, particularly those operating in transnational digital and knowledge-based environments, as well as innovators from developing economies who lack the resources necessary to engage in parallel litigation across multiple jurisdictions. Furthermore, the justifications advanced in support of the exclusion do not withstand rigorous scrutiny when examined in light of comparable regional instruments, the demonstrated feasibility of cross-border intellectual property recognition within the European Union, and the economic realities of the contemporary digital economy.

This study further argues that reform is both necessary and achievable through the gradual inclusion framework proposed in the preceding chapter. The proposed model offers a principled and practical mechanism for extending the scope of the Hague Convention to encompass selected categories of intellectual property disputes while effectively managing the legitimate risks associated with the cross-border recognition and enforcement of intellectual property judgments. By balancing enforcement efficiency with appropriate procedural safeguards, the framework seeks to enhance legal certainty for rights holders and strengthen the broader innovation ecosystem. Importantly, the proposal builds upon existing legal instruments and established doctrinal concepts and is designed to remain politically feasible through phased implementation and adequate protection of the interests of recognizing states and defendants.

Ultimately, the question posed in the title of this study—whether the 2019 Hague Judgments Convention impedes the protection of global innovation—must be answered in the affirmative, albeit with important qualifications. The Convention does not actively undermine global intellectual property protection; rather, it preserves the existing status quo, under which rights holders must continue to rely upon fragmented domestic laws, bilateral treaties, and regional instruments to enforce their rights across borders. However, in an era characterized by a global digital economy, where innovators routinely operate across multiple jurisdictions, intellectual property infringements occur simultaneously on a worldwide scale, and the costs of fragmented enforcement are measured in billions of dollars annually, maintaining the status quo itself constitutes a significant obstacle. Although the 2019 Hague Judgments Convention represents a historic achievement as the first general multilateral judgments convention to enter into force, it does not adequately satisfy the needs of the contemporary innovation economy. Addressing this deficiency through the reform framework proposed in this study should therefore constitute a central priority for the international intellectual property enforcement community in the coming decade.

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