Intellectual Property Concepts.
Philosophical and legal problems.

Summary

The issue related to the protection of intellectual goods remains an important topic both from the theoretical and practical perspectives of the use of this legal category in times of global trade. This topic also comes up in the sphere of media and journalistic discussions due to legal solutions related to the protection of intellectual property, which at the same time may affect the sphere of rights and freedoms of an individual. The protection of intellectual property remains an important issue also from the point of view of international systems, on the basis of which there are often disputes over the way of defining a given intellectual good. In this approach, it is also worth mentioning the discussions on the methods of protecting this category of goods, which, due to the complexity of interests of individual participants in the global market, often remains an incompletely resolved dispute. The specificity of intellectual property is also expressed in the fact that goods of this type concern various spheres of human activity. The availability of individual intellectual goods, in turn, affects the situation of both individuals and entire communities in a different way, which is even more evident in the case of medicines and medicinal products.

Due to the complexity of the above topic, various methodological approaches and different research scopes have been used so far. In this context, it is worth mentioning the work of C. Błaszczyk entitled *Propertarian Theories of Copyright*. This author focuses on the philosophical and legal analysis of individual concepts, but does not relate them directly to contemporary issues related to definition and practical problems within the systems of intellectual property protection. The analysis presented in the above work is also aimed at comparing philosophical concepts and classifying them from the point of view of the approach of the institution of intellectual property.

A slightly different approach to the issue of intellectual property was presented in the work of J. Stanek *Human Genes Patenting.* In this case, the author analyses the issues related to the impact of legal protection of medical devices on their availability and indicates how this translates into the individual's situation in a given case. The complexity of medicines as intellectual goods due to their heterogeneous nature were also highlighted. A special case in this context is the title human gene, which in itself cannot be protected as an intellectual property. The situation changes when, based on the knowledge of the human gene, a drug for

gene therapy is developed. In such a situation, it is possible to protect this type of drug. However, this is undoubtedly one of the borderline cases in the field of intellectual property.

But with regard to the use of philosophical theories in legal practice, it is worth mentioning the work of J. Gordon *On Owning Information: Intellectual Property and the Restitutionary Impulse.* From a methodological point of view, this work focuses on showing the possibility of using general assumptions about ownership within philosophical concepts in contemporary legal disputes. While analysing the principles of intellectual property protection, J. Gordon points to the US courts rulings which refer directly to the concept of J. Locke in their justification. Therefore, it proves that philosophical and legal analysis can be used not only in purely theoretical considerations, but also in the context of current legal disputes.

Relevant conclusions regarding the protection of intellectual property are also included in the following works: *All Rights Reserved* by K. Gliściński, *Copyright Issues* by S. Grzybowski, *Kant's Concept of Property* by H. Williams, *Performers Artists – Rights and Their Protection* by S. Tomczyk, *Photographic Work and Its Creator Copyrighted* by R. M. Sarbiński, *From Hooker to Bentham. English Systematic Thought Essays* by T. Tulejski, *Justice: A Reader* by M. J. Sandel, *Against Intellectual Property* by N.S. Kinsella, *Justice Boundaries* by M. Soniewicka.

In this paper, however, a more complex methodological approach was used, which is the result of the scope of the analysed issues. The aim of the study was to answer the following questions:

- How did the concept of intellectual property develop from the historical point of view?

- How has the perception of intellectual goods changed?

- What factors influenced the foundations and boundaries of the protection of these properties?

- How can the protection of a specific intellectual property be justified from a philosophical and legal perspectives?

- Can referring to various philosophical and legal concepts be helpful in defining the contemporary scope of intellectual property protection?

- What influenced the shape of the contemporary international system of intellectual goods?

- Is it possible to provide a stable model of intellectual property protection without the state's criminal law response?

- Does the contemporary system of intellectual property protection properly refer to the borderline cases of this property category?

In order to answer the above questions, different methodologies were referred to within individual chapters. The first chapter is to trace the chronological development of the understanding of intellectual goods and to indicate which factors influenced the changes in worldview in this area. As part of the analysis undertaken, reference was made to the historical and legal method, which allows to show the conditions in individual epochs without resorting to the contemporary perception of important concepts, as looking from a research perspective.

This chapter therefore refers to the historical view of the issue of intellectual goods, taking into account social and economic factors. The aforementioned historical and legal approach is to show how intellectual property was shaped in particular historical periods, as well as how the way of defining this legal concept has changed. In this chapter, therefore, the development in the perception of intellectual property is presented chronologically, starting with the issue of property protection in ancient Rome and an indication of the factors that allowed to distinguish this category in a specific way already in ancient times. In this respect, it was emphasized that the concept did not function as separate legal concept. However, this does not prevent it from proving that there were attempts to distinguish the interest of the creator or inventor in the protection of his work also in ancient Rome. Reference was also made to the analysis of the concept of ownership of St. Thomas Aquinas, as well as how property in England and Venice during the Renaissance was protected was also discussed. It also considered how the rights related to the personal claims of creators and inventors developed in the period of the Enlightenment changes. The influence of the doctrine of natural law on the way of defining the above concepts was also taken into account. This chapter ends with an analysis of the stages of shaping the system of intellectual property protection at the international level, taking into account the period of preparation of the Berne Convention. The discussed part of the work is therefore devoted to the description of the chronological development of concepts related to intellectual property and the analysis of factors that influenced this process. It is worth pointing out that the historical and legal method used in this chapter is therefore directly related to the answer to the question of how the concept of intellectual property was shaped. It required, therefore, to refer to the conditions and social and economic dependencies in individual epochs, without imposing on these contexts a modern understanding of concepts in the field of intellectual property, as this could make it impossible to show the real genesis of these concepts.

The historical and legal method, as mentioned earlier, allows to trace the chronological development of the perception of intellectual property. However, this method cannot help to

answer questions about the sources and limits of intellectual property protection. In the second part of the work, reference is made to the philosophical and legal analysis of selected concepts related to the perception of the concept of property and the way in which it is defined. The essence of the analysis is at the same time an attempt to distinguish premises that can be considered a philosophical and legal basis for setting the boundaries of intellectual property protection. At the same time, the aim was not to classify philosophical concepts in a specific way from the point of view of their theoretical and legal assumptions. As part of the aforementioned philosophical and legal method, an attempt was made to demonstrate that philosophical and legal concepts may constitute the basis for considerations concerning not only past, but also current issues related to the determination of the limits of protection of individual intellectual goods. Attempts were made to confirm the above assumptions within the framework of selected philosophical concepts that relate to the issue of property protection in different ways. In this approach, the analysis of J. Locke's, I. Kant's, G.W.F. Hegel's theories of property and analysis of the J. Bentham's concept of protection of property were made. Instead, these theories were contrasted with the libertarian concept of the institution of property of M. Rothbard. The analysis of the above concepts has shown that each of these theories is based on different principles of determining the scope of intellectual property protection. The role of the state, as a guarantor of the protection of rights related to the use and trade in intellectual property, in each of the discussed theories is also not uniform. Such presentation of the above-mentioned issues related to the institution of ownership allows for the transfer of philosophical and legal assumptions to contemporary practical problems concerning the protection of intellectual property. In this context, the utilitarian assumptions of Bentham's theory make it possible to analyse the indicated issue taking into account the social nature of the institution of ownership. It also allows for the development of considerations concerning the relationship between the degree of legal protection of intellectual property and the interests of individual social groups. Concepts related to libertarian philosophy, in turn, make it possible to broaden the reflection on the effectiveness of legal protection provided by state institutions in the case of claims related to violation of intellectual property. The discussed philosophical and legal assumptions, resulting from individual theories, allow to demonstrate that a given scope of protection of intellectual property is possible to justify not only from a practical, but also theoretical and legal point of view.

The next part of the work is aimed at analysing selected intellectual goods, taking into account the premises resulting from the already discussed philosophical and legal theories. In this case, the comparative and dogmatic methods were used, but only to the extent that it served

to show the differences between individual models of property protection. In this approach, attention was also given to the function of individual institutions of rights, taking into account also economic and social factors. This is also due to the fact that it is difficult to analyse the impact of a given protection method in isolation from economic factors. This approach is also consistent with the assumptions of the legal methodology based on the concepts of L. Morawski and Z. Ziembiński, who assumed that given legal solutions cannot be analysed in isolation from their social and economic contexts.

The issue of ensuring the protection of intellectual property within the framework of the global exchange system is analysed in the fourth chapter. This part focuses on the description and analysis of selected international legal acts from the perspective of their impact on the protection of intellectual property. From the methodological point of view, the assumptions of the comparative method were used, through which it is possible to conduct a comparative analysis of individual systems of protection of intellectual property. In this context, the way of protecting intellectual property established under the TRIPS agreement and NAFTA pact was discussed. The philosophical and legal foundations which make it possible to justify the contemporary boundaries of intellectual property protection are mentioned. Bearing in mind that the issues related to setting the boundaries of the protection of intellectual property are also interdependent with social and economic realities, the analysis contained in this part of the work is also based on the theory of equal opportunities contained in A. Sen's philosophy and Rawls's concepts related to the concept of primary goods. The next part of the chapter refers to the way in which intellectual property is protected in the EU structures. Analysing the above aspect of intellectual property, the legal solutions designed within the framework of ACTA and the Directive on the protection of intellectual property in the digital single market.

Conclusions drawn on the basis of the use of the comparative method in the examination of individual legal acts made it possible to define the areas, in which the current scope of protection is difficult to justify, if we confine ourselves to the content of the international treaties and agreements themselves. Referring to the theories of justice allows to solve this problem, because in this way it is possible to find an answer to the question why a given intellectual good should be protected at all. In this approach, the use of justice premises fills this gap by providing a theoretical and legal basis for the selected protection model.

Tracing the history of changes in the way of defining the institution of intellectual property allows us to conclude that this problem does not only concern theoretical issues, but also requires taking into account sociological factors and the economic environment. The above issues also affect the perception of the fact that the creative activity of an inventor or author

was not recognized from the outset as the obvious basis for the protection of a given intellectual property At the same time, it is also important to avoid the contemporary narrative of intellectual property, in the case of examining the genesis of the emergence of this legal category. In this context, when referring to the perception of intellectual goods by the ancient Romans, it should be indicated that the specific nature of the law at that time did not allow the author's or inventor's rights to be defined unequivocally. In this approach, it was only possible to search indirectly for the basis of protection, which concerned what could be defined today as intellectual property. At the same time, the notion of the institution of property was unequivocally related to economic issues, as well as the valuation of a given good from the point of view of its usefulness. However, it seems acceptable to say that in ancient times there was already a question of how to describe ownership rights in relation to goods that are not physical in nature. However, the considerations of this problem in the ancient times did not touch upon the complexity of the rights of the creator or inventor and in what situations the ability to defend them is actualized. However, it was noticed that the violation of a given work or invention is also an attempt to undermine the rights of the creator or inventor to his work.

The chronological analysis of the problem of the development of the concept of intellectual property therefore entitles one to state that the scope of protection of intellectual property was not uniform, and the inherent basis for protection was not always creative activity. The beginnings of a formalized system of protection of inventive activity can be seen in the period in which it was noticed that strengthening the position of an inventor may favour the military or economic position of a given country. This was the case when a specific invention was related to the improvement of armaments or the addition of a new method of producing goods considered valuable. The position of the inventor was therefore related to whether his activity was noticed by the authorities and considered useful for the country from the point of view of competition in the international arena. From this perspective, therefore, the mere appreciation of intellectual or creative value was not a priority of legislative activities, but rather an additional effect of the adopted solutions. The fact that the rights of creators and inventors did not constitute an essential condition for legal protection, however, did not preclude the fact that people engaged in creative and inventive activity began to become convinced that infringement of their works should result in the same consequences as infringement of property in any other case. It should therefore be emphasized that the scope of protection of intellectual property was, in fact, determined by the ruling decisions of the royal or state authorities, which, through the established monopolies (as part of the grant of a patent), granted protection to a given entity. It is therefore not acceptable to apply to a complex category of intellectual property

a uniform concept of ownership when conducting a historical analysis. The basis for further considerations in the above-mentioned scope may be, however, philosophical and legal issues, helpful in determining the boundaries for the concept of intellectual property.

The consequences of the considerations undertaken as part of the historical approach to the evolution of intellectual property do not, however, make it possible to distinguish the premises of protection from the theoretical perspective. The search for the basis of this protection, however, is justified by referring to philosophical and legal assumptions. In this context, the theory of J. Locke's ownership should be distinguished and the labour theory premises for the protection of ownership rights contained therein. It should be noted that Locke's concept does not refer directly to the protection of intellectual property, which does not mean, however, that it is not possible to admit the existence of the rights of creators and inventors in relation to the goods they have produced or invented. These powers, in turn, are both positive and negative, and thus refer to the sphere of the rights of the owners of intellectual property, but also exclude other people from using a given work or invention by third parties. The issue related to the impossibility of transferring the labour theory premises of property protection to intellectual property results, in turn, from the fact that Locke naturally created his concept based on the social and economic realities of the time. In this approach, it should be noted that at that time the concept of intellectual property did not yet play a significant role among market participants as well as in the social dimension. However, this concept allows the protection of a given good to be justified, as long as it is possible to prove that the author or inventor must perform a specific work in order to create it. The labour concept, however, cannot constitute the basis for the protection of a property solely because it is distinguished by its artistic or intellectual value. From this perspective, this is an unquestionable drawback of Locke's theory in juxtaposition with contemporary issues relating to the delimitation of intellectual property. However, it cannot be ignored that this concept comprehensively presents the essence of property understood in a classic way, and does not ignore such issues as the economic or social environment. An additional argument in favour of the methodological usefulness of this concept is the fact that it is also used as a basis for theoretical and legal considerations in justifying judgments in US courts in the scope of justifying a specific scope of protection of intellectual property.

The above-mentioned premise of the existence of the author's or inventor's contribution in the event of the existence of a basis for the protection of a given property is at the same time an important issue that must be resolved both from the perspective of the labour theory itself and the current borderline cases. It is worth pointing out that the contemporary economic

perspective makes the contribution of work important only in the case when a given good is desired from the point of view of market laws and only in such a situation is the mentioned work valued in a noticeable way. At the same time, the Locke's concept may be helpful in the search for philosophical and legal premises for the existence of intellectual property by assuming that the existence of a contribution to work conditions the creation of a given good. Adopting this premise, in turn, means that every good that was created as a result of the work of the creator or inventor is protected, regardless of how this work was finally valued by the market. On the other hand, the issue of cases in which an element of the work performed is difficult to capture, i.e. there is no reason to cover a given good with legal protection, requires a separate discussion. Such borderline cases include, inter alia, biotechnological inventions, databases, or medicines and medical devices. It is difficult to associate the creation of these goods with work done by one man, because most often entire teams of specialists are involved in a given project, financed by large market entities, such as corporations. As a result, it is not possible to assign a claim to a specific inventor. This problem is particularly important in the case of the aforementioned medicines and medicinal products for which the labour premise cannot be separated, and thus, at least from Locke's perspective, these goods would remain outside the scope of protection.

The issue of intellectual property protection looks different from the perspective of the Kant's theory of property. This concept enables the analysis of current definition problems related to intellectual property without referring only to the paradigm of the work performed. Defining the institution of property, Kant indicates that the rights resulting from being the owner of such goods as literary works allow a specific person to express thoughts and beliefs, The institution of ownership in this approach no longer refers only to the negative rights of the owner, so it does not only mean the possibility of demanding from third parties not to violate the relationship of the owner with the thing. The philosopher also points to intellectual property as a separate type of property that is not the same as the rights relating to the physical thing itself. Kant also points out that ownership relating to intangible goods does not only refer to the aforementioned relationship between the owner and the thing. In this approach, it is also important to indicate the relationship of the owner with other members of the community, because ownership acquires significant meaning only in the social environment. It was no less important for Kant to point out that an attack on a given work does not only mean that the author's ownership rights are undermined, but is also a restriction, and sometimes even taking away the right to freedom of artistic expression. Therefore, Kant does not refer only to the contribution of labour as the basis for the protection of the good, but also appreciates the

intellectual value of the very creation a given intellectual good. Thus perceived concept of ownership does not limit, on the theoretical level, the premises for the protection of intellectual property only to the statement that the work was created as a result of the labour of a specific person. Moreover, the creative act itself leads, in a way, to the individualisation of the work and linking it with the creator. Kant's assumptions of this concept, however, are not universal in the sense that the philosopher himself excluded the possibility of applying legal protection to goods other than literary works. Such perception of intellectual goods by Kant thus means that his concept does not provide a philosophical and legal basis for the protection of other intellectual goods. Additionally, Kant assumes that the work deserves protection due to the fact that it is individualized by the creative act, which also leads to the conclusion that the reproduction of a work itself does not require the consent of the original author. In this approach, the reproduction itself becomes another individualized creative act. Therefore, Kant's concept of property also indicates limitations in terms of the possibility of its use in the context of contemporary theoretical and practical problems related to the protection of intellectual property. As in the case of Locke's theory, Kant's concept cannot apply to all intellectual goods due to the fact that the philosopher himself limited the scope of the premises constituting the basis of this protection. In particular, it is worth pointing out that if the assumptions of the Kantian concept were directly applied to the contemporary realities of intellectual property, some goods such as film and photographic works would remain outside the scope of legal protection.

As it is not possible to relate the conditions of protection to all intellectual property in the concepts cited so far, the theory of property developed by Hegel comes up to be analysed. Within this concept of ownership, the premise of intellectual property protection is shaped in a different way than in the case of Locke's and Kant's approach. Hegel points out that the institution of ownership is a specific tool within which a given subject can act freely. The creator who is the author of a given work, at the same time, manifests his free will in an environment that is external to himself. This, in turn, leads to the conclusion that the scope of protection of intellectual property on the basis of Hegel's concept is not only the protection of the author's claims, but also a guarantee that the possibility of exercising free will in the creative process will not be threatened. At this point, there is an issue related to the mutual influence of artists on their areas of freedom, as well as the need to take into account the interests and rights of other members of the community. In this context, a system for the protection of intellectual property based on the guarantee of the realization of free will in the creative process cannot limit the freedom of other entities. It is noteworthy, that Hegel himself noted that a given intellectual property protection system should not be fully formalized. The philosopher believed

that human creative activity should, by its very nature, be regulated by customary law and informal norms relevant to a given community. Unlike Kant's conceptions, Hegel's assumptions make it possible to search for premises for the protection of intellectual property, regardless of its nature. Therefore, in this case, it is not limited to literary works alone. The cited assumption that the free will of the creator is fulfilled means that a given work should be protected whenever it comes to a creative or inventive process. It should also be noted that Hegel did not assume the protection of every good, regardless of its aesthetic value. The philosopher pointed out that only those goods that can be associated with the premise of their uniqueness deserve protection, so the implementation of human free will in the process of creation results in a work of an individualized and unique character.

The issue of the protection of intellectual property appears differently by referring to the J. Bentham's concept of property. In this case, the protection of property depends on the goals that a given group or community deems the most important. Such a way of looking at property means that the guarantee of peasants' rights would each time have to be confronted with social needs, which would also translate into the protection of intellectual property. The main factor determining the scope of ownership rights in this respect is the question of the felicific calculus ("happiness factor"). While it can be concluded that this concept tries to balance the interests of the owners and individual members of the community, it must also lead to the breakdown of stable market relations. The relativity of the sense of happiness may also affect the difficulty in establishing a permanent scope of protection and the catalogue of goods that would be subject to such protection at all. At the same time, however, making the above-mentioned scope of protection dependent on ensuring the rights of individual owners and other entities within a given community makes it possible to maintain a compromise. Hence, in order to implement the felicific calculus, certain intellectual goods would have to experience limitations in the scope of their protection, and in some cases would be completely deprived of this protection. Thus, Bentham's concept makes the creation of protection of a given good dependent on its compliance with the sense of justice in a given community. In such a context, a system that satisfies the principles of justice would be a legal system under which the realization of the claims of the owners of goods does not lead to deterioration of the situation of other market participants and members of society. Thus, the utilitarian premise of protection makes it possible to protect goods with a special impact on the human situation, such as medical products, medicines, as well as inventions related to biotechnology. The protection of this catalogue of goods would be at the same time limited if it would help to maintain the felicific calculus. In a specific case, if the patent protection of a drug significantly limited its availability,

then on the basis of Bentham's concept, the scope of this protection could be limited, and in extreme cases completely abolished.

The assumptions of Bentham's concept, by their very nature, do not allow to fully take into account the complexity of contemporary societies, and thus a different approach to the issue of the basis and scope of intellectual property protection. This problem is particularly visible in the context of contemporary, globalized trade, as well as the differences between various legal and economic models. The above issue can therefore also be considered from other perspectives, both social and libertarian. In libertarian terms, there should be no formalized system that, through state institutions, determines the scope and form of protection of any goods. Libertarian theories also refer to the assumption that no subject is entitled to use violence. The non-aggression axiom is therefore a specific restriction of the freedom of every human being who is entitled to any action, also in terms of ownership rights, as long as it does not have negative effects on other participants in social life. According to the above conditions, the protection of intellectual property could therefore be ensured as part of the implementation of the principle of freedom of contract. In this way, each of the contracting parties would itself determine the scope and form of protection of a given property. Guaranteeing this type of basis for protection would also make it possible not to interfere with the economic or cultural specificity of a given community, because, by way of such an agreement, each party could take into account the aforementioned differences. The libertarian view of the protection of intellectual property does not therefore refer on principal to the state as the entity that should shape the system of property protection, assuming that individuals should decide about the purpose and function of their rights.

Therefore, the above-mentioned concepts of ownership are not sufficient to determine the foundations for the protection of intellectual property from the perspective of international markets. Therefore, considering the interdependencies occurring in relations with a global scope, it is also necessary to refer to the theories of justice. In this context, it is worth quoting the concept developed by Amarty Sen, which indicates that the issue of differences between given societies cannot be ignored, both in terms of their development opportunities and natural limitations. The philosopher points out that differences, both in the economic and cultural layer, are not a barrier to growth, but are a kind of potential. At the same time, this potential can be used to improve the economic or financial situation, which in turn may translate into increased competitiveness within the aforementioned global exchange of goods. From this perspective, the discussion on the adoption of an appropriate model of intellectual property protection in the international dimension must take into account the aforementioned differences. Therefore, it is

not permissible to simply transfer the legal solutions available in one country to the regulations on a global scale. Sen emphasizes that the concept of diversity requires the recognition of the fact that social and cultural conditions also affect how intellectual property is perceived in a given society. This, in turn, makes it impossible to adopt the legal system of developed countries to countries at a completely different level of development. Additionally, adopting an inadequate protection model would make it ineffective in terms of real guarantees for creators or inventors. The compliance of a given protection system with the principle of justice must therefore come down to the fact that a given model takes into account the level of state development and its need for the legal protection of intellectual property. Moreover, the premise of justice provides the basis for the protection of these types of intellectual property, the protection of which would not be justifiable only from the perspective of philosophical and legal concepts.

At the same time, Sen's theory indicates that the development of a given country is conditioned by complex factors, which indirectly leads to the conclusion that the differences in the potentials of individual countries must mean the emergence of a different economic environment. This concept emphasizes that the aforementioned economic environment affects every human being, as well as the scope of his achievable development, the so-called *capabilities*. Sen focuses on the fact that each individual has a different resource of abilities and talents, and a given legal system should take these differences into account. Thanks to this view, the above theory can be used to consider what the global system of intellectual property protection should look like. In the case of international models of protection, there is undoubtedly a situation of a clash of conflicting interests of individual participants in the global exchange of goods. These participants, however, differ in the aforementioned level of economic development, and thus in their approach to the protection of intellectual property. For this reason, it is not possible to adopt any system of intellectual property protection, as it will not take into account the specificity of individual countries. It is therefore clear that from the justice point of view it is not acceptable to base the global protection system on the legal model of one of the developed countries, as this would discriminate against developing countries. An area that is particularly exposed to this type of disproportion is the market of medicines, medical products or biotechnological inventions. Restrictive regulations on the protection of this category of goods may not only limit their availability, but also exclude weaker countries from their own projects concerning the medical industry.

The justice perspective on the protection of intellectual property, however, is not limited to a social premise. It should be pointed out that the justice element can also be distinguished

in Rawls's liberal theory of property. Contrary to Sen, the philosopher notes that intellectual property deserves protection not because of the differences in the development of individual market participants, but because intellectual goods are at the same time specific primary goods. The essence of the primary goods, however, is that they are equally important for any entity that participates in the market exchange. Therefore, the recognition of intellectual goods as primary goods allows them to be granted legal protection without the need to search for additional premises. Such an approach to the issue of intellectual property protection also allows avoiding a discussion about cultural or systemic differences in the perception of this category of goods. Rawls's concept should not be equated with libertarian theories centred around Rothbard. Rawls does not assume that it is possible to provide legal protection for creators and inventors without the existence of state institutions. Thus, as noted, both Sen and Rawls see the need to protect intellectual property, although the premise of this protection is different for each theoretician. Both concepts emphasize the need to balance the interests of each of the participants in trade. Rawls, without going into the differences between individual entities, assumes that there should exist a certain basic level of protection that can be invoked by every market participant.

Thus, referring to the above theories allows for finding a justification for the protection of intellectual property, regardless of whether this protection may lead to the emergence of a difference of interests between individual participants of the trade. Importantly, concepts referring to justice values also allow to answer the problems related to the so-called borderline cases. This issue was not properly presented in such acts of international scope as TRIPS and ACTA. However, without proper reflection on the way of regulating the international protection of intellectual property, a model began to be created in which individual freedoms and rights are not properly protected. One may even get the impression that these values have been arbitrarily and without proper justification treated as worth sacrifices to ensure a stable system of protection for intellectual property. But, as mentioned earlier, a protection system of global or international scope must take into account different levels of development of states which are parties to the agreements concerned. From this perspective, Sen's cited concept of methodological individualism, as well as Rawls's liberal theory of property, may form the basis of a model far from the assumption that one system is appropriate for all countries. (*one size fits all*)

Based on Sen's concept of justice, the protection of intellectual property on a global scale must take into account premises related to development opportunities and the needs of individual people. This means that the proposed legal institutions intended to protect intellectual

property cannot arbitrarily sacrifice individual rights to ensure the realization of the claims of the owners of intellectual property. Rawls's primary good theory, in turn, would ensure that the protection model was shaped in such a way that the problem of disproportionate protection of intellectual property would remain marginal. This would be possible by adopting a minimum level of protection for intellectual property applicable to both developing countries and those with market advantages.

Justice theories also make it possible to create such a model of intellectual property protection that does not require actions of state bodies on the basis of criminal law. It is worth pointing out that legal solutions such as the regulations known from ACTA should be avoided, because this type of protection of intellectual property inevitably leads to the violation of other values, such as individual freedom. Therefore, basing the protection model on justice premises allows for a completely different positioning of the role of the state in possible disputes concerning infringement of intellectual property. From this perspective, state organs should primarily act on the principle of subsidiarity and only persuade the parties to end the dispute faster. Therefore, Sen’s and Rawls’s theories highlight that it is not possible to build a just system for the protection of goods when this system requires the sacrifice of some values for the sake of others. It is also worth noting that guaranteeing the free will of every individual should be the basis of every property protection system. Legal institutions should also not limit the creative potential or creativity that helps in the development of inventions. Therefore, thanks to the justice perspective, it is possible to see the complexity of the issues related to the protection of intellectual property. In particular, it should be borne in mind that the introduced legal solutions, even if they are intended only to ensure the free exchange of goods, often their effects also affect the area of citizens' freedoms and liberties.

Therefore, when analysing the grounds, scope and method of intellectual property protection, it should be borne in mind that this is not a uniform category of goods, which means that a given protection model must take into account the complexity of possible legal solutions. This problem is all the more current in view of the increasing degree of global exchange. Therefore, proposing a coherent system for the protection of intellectual property is feasible only if a multifaceted approach is used, both in terms of methodology and theoretical and legal aspects. It is not permissible to arbitrarily consider a given good to be protected at the expense of other values, as is the case with ACTA and TRIPS. It is not enough to answer only the question of how and what to protect, without also answering the question of the basis of the protection. Therefore, only the premise of protection, derived from philosophical and legal

foundations, makes it possible to move to the next level, which is a specific normative layer and the legal institutions it contains.