Index

acceptable risk 158
access 72
concept and typology 104–8
conditional 75, 77, 82, 97, 102, 104, 105, 106–7
general/total/open see open access
restricted 75, 77, 102–3, 105, 106–7
semi-open 83, 105, 106
unconditional 105, 107
accessories/spare parts 309–12
Adam Open v. Autec 307–9
Adidas v. Fitnessworld 293–4, 308
Affirmation of Commitments (AoC) 265
Africa 330–55
digitalisation and Internet access 335–7
South Africa 286–8
AIDS/HIV medicines 102
aircraft patent pool 93
ALAI International Congress (1997) 126
‘Allmende’ (common land) 38–41
ambush marketing 318
American Society of Composers, Authors and Publishers (ASCAP) 100
anti-circumvention measures 348–51
Anti-Counterfeit Trade Agreement (ACTA) 255, 267–8
antitrust law 8, 16, 43, 53–4
and the Google book settlement 206–7
see also competition law
archives 157–9, 161, 352
Argentina copyright case 345
Arrow, K.J. 46
Arsenal Football Club v. Matthew Reed 295, 303–7, 315–16, 317
Assembly of the Paris Union 285–6, 289
Association of American Publishers (AAP) 192, 197, 200, 258
associations
of authors/performers 119–20
and collective trademarks 241–2, 243–4, 251
quality mark associations 246–50
see also collecting societies; collective management societies (CMS)
Australia 347
Austria 131
Autec 307–8
authors
associations of 119–20
competition law, copyright and members rights in collecting societies 182, 187–8, 189
copyright, exclusivity and authorship 168
publishers in authors’ CMS 133–9
danger of ignoring the conflicting interests between authors and publishers 139–43
rights and investment protection rules 129–30
Authors’ Guild 192, 197, 200, 257–8
Authors Guild Inc. v. Google Inc. 257–8
see also Google Book Project
Barcelona Agreement 64, 65, 141
barriers to market entry 232–3
Battersby, G.J. 228
‘Bavarian Beer’ 242, 250
Belgium 83
Berne Convention 149, 162, 172–3, 176, 201, 204
bilateral licences 75
Bilski v. Doll 52
Bilski v. Kappos 71
Biological Open Source (BiOS) Licence 80–82, 109

357
BioMoby messaging standard 108
biotechnology
  clearinghouses 100–102
  open 108–11, 113–14
  patent pools 95–6
  see also gene patenting
blanket licences 132, 144
blocking patents 71, 73–5, 83–4, 106, 111
BMW 286–8
Book Rights Registry (BRR) 197, 210, 258
Borghi, M. 32
*Boston Professional Hockey Association v. Dallas Cap and Emblem Manufacturing* 221–2, 223
Breyer, S. 51, 52
broadcasting monopoly 280–81
*Budweiser* case 295, 307, 314–15
butterfly effect 48–9
cable retransmission right 125–6
CAMBIA (Centre for Applications of Molecular Biology in International Agriculture) 80–81, 103–4, 109
Canada 197, 215
Carnegie Mellon University 152
Carroll, M. 24
cartels 252
  collecting societies and competition law 183
catastrophe theory 48, 49
CELAS 142
*Céline SARL v. Céline SA* 293, 314
Centre for Applications of Molecular Biology in International Agriculture (CAMBIA) 80–81, 103–4, 109
Chin, D. 258
choice of law rules 57–8
CISAC (International Confederation of Societies of Authors and Composers) 65, 132, 170
CISAC decision 142, 183, 188
civil law systems 286–7
class actions 193, 204, 211
  adequacy of representation 207–8
  limitations 197–201
settlement class actions 200–201, 209–10
  clearinghouses 91, 97–103, 104
  Code of Good Practice on Information, Participation and Transparency in Internet Governance 271
*Coditel v. Cine Vog (II)* 62
  collaborative licensing 90, 91–7, 104, 107, 112
  collaborative ownership 16–17, 21, 84, 85–6, 107
  collateral products 228
  collecting societies 34–8, 215
  collectivization of copyright 168–9, 170–71, 175–6, 181
  competition law and 182–8
  collecting companies vs authors 187–8
  collecting companies vs users 184–7
effective regulation 189
  member rights for authors 182, 187–8, 189
  collective employment agreements 324, 327
  collective licensing 91, 97–103, 104, 107, 112
  collective management societies (CMS) 131–44, 145
  collective management of copyright, copyright first owners and investors 131–3
  EC Rental Directive model 121, 122, 123, 123–4
  publishers in authors’ CMS 133–9
danger of ignoring conflicting interests of authors and publishers 139–43
collective ownership 12–13, 21–34, 55, 66–7, 84, 86
  alternative understanding of open innovation 33–4
  concept 21–3
  impacts of open approaches on competition 30–33
  openness and copyright law 24–6, 28
  openness and patent law 26–30
  collective rights management 34–8, 55, 187–8, 189
Index

music performance rights in Europe 62–6
problems with copyright ownership and investment protection rights 128–46
collective trademarks 17–18, 20, 241–54
conventional 242, 242–5, 252, 253
geographical indication marks 8, 10–11, 18–19, 21, 242, 250–51
guarantee marks 20, 242, 245–50, 252, 253
collective use 108
collectivization of copyright 166–91
dangers of 179–88
effects of 176–9
and institutions 175–6
and liability rules 169
rationale for 168–75
collectivization of rights 61–6
commercial use
publishers’ power in CMS and commercial users’ ability to obtain comprehensive licences 135–9
US approach to orphan works 160–62
Commission on Intellectual Property Rights 354
common law systems 286–7
common ownership 38–41
communication rights 333, 346–8
comparative advertising 236
competition
economic progress, economics and jurisprudence 45–54
impact of collective ownership 30–33
impact of common ownership 40–41
impact of individual ownership 15–16
impact of multiple ownership 19–21
impact of ownership in general 9–12
multiple territorial ownerships as problem for 60–66
open source 79, 81–2
open world and proprietary world 42–4
trademark merchandising and 226, 232–4, 238
unfair 11, 274, 290
competition law 182, 274
and collecting societies 182–8
collective trademarks 244–5, 252, 253
interaction with IP protection in general 5–9
multiple territorial rights and 56, 60–66, 66–7
comprehensive licences 135–9
compulsory licences 32, 43, 173
patents 29, 30, 51, 82–3, 84
trademarks 43
conditional access 75, 77, 82, 97, 102, 104, 105, 106–7
Confederation of Swedish Enterprise 324
confusion as to sponsorship 222, 223, 226, 232
connecting factors 333
consistent product quality 237
constructed cultural commons 112–13
consumer association between trademarks 225
consumer confusion 221, 222–3, 226, 231–2, 293–6
confusion as to sponsorship 222, 223, 226, 232
likelihood of confusion 222, 296
requisite link 294, 295–6
contracts
collectivism and its role in individual licensing contracts 117–27
statutory rules on individual copyright contracts 118
contractual relationships 32–3
contractual (relative) rights 33
conventional collective trademarks 242, 242–5, 252, 253
cooperative ownership 17–21
coordination 267
copyleft 25, 79, 82
copyright 46–7
collectivism and individual contracts 117–27
collectivization of 166–91
education and 324
African perspective on digitalization and copyright issues 330–55
virtual teachers 325–8
Emerging US approach to orphan works 147–65
European collective management of music performance rights 62–6
European copyright law and prior consent 211
and exclusivity 167–8
collectivization of copyright 172–4
fundamental paradox of 130–31
Google book settlement 211, 212
openness and copyright law 24–6, 28
ownership and investment protection rights 128–46
statutory rules on individual contracts 118
teachers’ exemption 326, 327
counterfeit products 230
country of transmission rule 57, 58
creation/invention, collaboration during 16–17
Creative Commons (CC) licences 24–6, 29, 30, 100, 202
creative works 332–3
vs factual works 160
creativity 168
credible commitment 79, 81
cross-border transactions 56, 57–60
cross licences 75
culture
collectivization of copyright 169, 171, 172, 176, 178
cultural dangers 180–82
cultural heritage 40, 211, 213
cultural industries 129
damages, punitive 163–4
database protection 318
databases 155–6
deadweight loss 8
December Compromise 324
defences see experimental use defence; trademark defences
Delphion 99
derivative right holders 35
derivative works 53, 153, 160
descriptive fair use 236
descriptive purposes use 305–6, 309
designations of origin 10–11, 18–19, 21
Digital Libraries Initiative (DLI) (EU) 213–16
digital rights management (DRM) systems 174–5, 348–51
digitalization
collectivization of copyright 174–5
and copyright issues for the education sector in Africa 330–55
benefits and challenges 339–45
DRM and collectivization 174–5
Google Book Project see Google Book Project
and Internet access in Africa 335–7
of lectures in Sweden 321–9
disclaimers 226, 230, 303
disclosure of advances in knowledge 49–50
dispersion of identity and hold upon the public mind 297
dissertations, student 341–2
distinctive character or repute, taking unfair advantage of 297
distribution of fees 180
distribution rights 333, 346–8
Diversity Arrays Technology (DArT) open source licence policy 81, 103–4
documentary filmmakers 156, 157
dominant position, misuse of 183–8
Dreier, T. 58
Drexil, J. 144
droit d’auteur system 118, 129, 130, 176
due process 199, 207–8
DVD patent pool 94
dysfunctional behaviour of market players 7–8, 10–11, 43
E-codes 288
EC Rental Rights Directive model 120–26, 127
economic argument for collectivization 169–71, 172, 176
economic interests 181–2
economic progress 45–54
economics 45, 46, 47–8
education
African perspective on copyright issues and digitalization 330–55
virtual teachers in Sweden 321–9
EMI Music Publishing 138, 144
Index 361

employment, creative works made in the course of 333
employment law 118–19, 323–4, 326
English Copyright Act (1911) 332
entrepreneurs 31–2, 41–2
ephemera 157–9
equitable remuneration 119–20
Espacenet 99
essential function of a trademark 304–5, 306
Europe 335
perspective on the Google Book Settlement 209–16
see also under individual countries
European Court of Justice (ECJ) 252–3
*L’Oreal* decision 241, 252, 253
sport merchandising
famous marks 293–6
trademark use 298, 301, 303–16
European Economic Area (EEA) 59
European Patent Office (EPO) 90
European Union (EU)
collective management of music performance rights 62–6
collective trademarks 241–54
Community Trademark Regulation (CTMR) 289
competition law and collecting societies 183–8
Copyright Directive 59
DLI 213–16
EC Rental Rights Directive model 120–26, 127
Europeana project 213–14
exhaustion rule 58–60
Internal Market and Services Directorate General 140–41
Paris Convention see Paris Convention
perspective on the Google book settlement 210–11, 212, 213–16
proposed collective guarantee mark 253
proposed Community Patent Regulation 76
Recommendation on online music licensing 63–4, 65, 140–42, 143, 144
Satellite/Cable Directive 57–8

sport merchandising
famous marks 291–7
trademark use 297–315
well-known marks 284–5, 289–91
Trademark Directive 243, 253, 286
Article 5 292–4, 296, 297, 303, 307–8, 314, 316
Article 6 303–15, 316
famous marks 291–4
Europeana project 213–14
exceptions
copyright law 334, 351–2
EU perspective on the Google book settlement 214–15, 216
trademark rights 306
exclusive (absolute) rights 33, 233
collectivization of copyright and 172–4
combined with remuneration rights in the EC Rental Rights model 120–25, 126
copyright and exclusivity 167–8
Nigeria 333
and online dissemination of works 346–8
exclusive visibility deals 318
exhaustion rule 58–60
experimental use defence 52–3
extended collective licences 35–7, 169
Facebook 256
factual ownership 27, 85
factual works 160
fair use 192
descriptive 236
nominative 236
orphan works 156, 159–62
trademark merchandising 235, 236
famous marks 291–7, 317
consumer confusion 293–6
required link 294, 295–6
types of harm 297
fan fiction 318
fault standards 149, 162, 163–4, 165
Ficsor, M. 167, 173
financial crisis 45
first sale doctrine 58–60
fixation 158, 332–3
FLEUROP 242, 246
Individualism and collectiveness in intellectual property law

follow-on research 53
France 260
   Intellectual Property Code 248
   SACD 137
freedom to operate 105
Galbraith, J.K. 45
GEMA 134, 136–8, 142
gene patenting 71–114
general access see open access
General Public Licence (GPL) 80
Generic Names Supporting Organization (GNSO) 262, 265
geographical indications 8, 10–11, 18–19, 21, 242, 250–51
Germany 121, 125, 131, 215
   Act Against Restraints of Competition 248–9
   Act on Collective Rights Management 178
collective trademarks 241–54
Copyright Contract Law (2002) 119–20
Federal Cartel Authority (Bundeskartellamt) 249–50
Federal Court of Justice 245
GEMA 134, 136–8, 142
Institute for Quality Protection and Labelling (RAL) 247
investment protection rights 133, 134, 136–9
mobile phone ring tones 136–8
myvideo 138–9
Trademark Act 245–6
Gervais, D. 174
Ghana 347–8, 349–51, 351–2
Gillette v. Parason Flexor 309–13
Globacom 337
Globally Protected Marks List, proposed 262
Golden Rice patent pool 95
Google 256, 257
Buzz 256
Google Book Project 148, 194–5
multinationals’ global governance on the Internet 257–60, 266, 268, 269
settlement (RPS) 149, 192–216, 258, 259
   basic terms 195–7
   European perspective 209–16
   limitations of the settlement 197–203
   possible legal challenges 205–8
   US perspective 201, 203–8
Google Library Project 194
Google Partner Project 194
Great Recession 45
Greenberg v. National Geographic Society 343
Grimes, C.W. 228
gTLDs 261–4
guarantee marks, collective 20, 242, 245–50, 252, 253
guilds 118–19, 171
GUS technology 81
Halloween garbage bags 50–51
Hand Test 164
HapMap 108
Helfer, L.R. 171
Hewlett Packard 337
high-quality inventions, patents for 89–90
Hilto, R.M. 273
HIV/AIDS medicines 102
honest practices, use in accordance with 303, 309–12, 313, 314–15, 318
Human Genome Organization (HUGO) 100
Human Genome Project 108
human rights 330
IBM 76
identical marks on identical goods 305, 306, 307–9
IFPI Simulcast decision 140
Implementation Recommendation Team (IRT) 261–2, 263–4, 269
‘in gross’, valuing trademarks as 234
incentive losses 179–80
incentive theory 39–40, 45, 47–8, 52
incentives 42–3, 67, 181
failure in orphan works case 150–51
inclusive participation 267
indication of intended purpose 303, 309
individual employment agreements 324, 327
individual licensing contracts
  collectivism and its role 117–27
  statutory rules 118
individual ownership 12–13, 14–16, 42
  patent law 73–84, 106, 111–12
  blocking patents 71, 73–5, 83–4, 111
  licensing and openness 75–83, 84, 106, 112
individual rights management 35
information clearinghouses 97, 99, 101
information, communication and entertainment (ICE) technology 93–4
injunctions against patent infringers 51, 52
Innovaro Pharmalicensing 101
innovation 168
dangers of collectivization of copyright 179–80
Institute for Quality Projection and Labelling (RAL) 247
intangible goods 39–41
Intellectual Property Constituency (IPC) 262, 265
intent-to-use trademark applications 223–4, 226, 229
intermediate options 202
International Confederation of Societies of Authors and Composers see CISAC; CISAC decision
international exhaustion rule 58–60
international harmonization 162
International Instrument on Limitations and Exceptions to Copyright, proposed 351
International Olympic Committee (IOC) 279, 280, 281, 282
Internet 318
  benefits and challenges of digitalization for copyright owners 339–45
  digitalization and Internet access in Africa 335–7
multinationals' global governance 255–72
Google Book Project 257–60, 266, 268, 269
ICANN trademark protection measures 260–5, 266, 269
multi-stakeholder IP governance 266–71
online environment and copyright protection in Nigeria 345–52
virtual teachers 321–9
Internet Corporation for Assigned Names and Numbers (ICANN) 260–65, 266, 269
Internet Governance Forum (IGF) 266, 268–71
Internet Treaties 347
investment protection rights 128–46
  collective management of copyright, copyright first owners and investors 131–3
  investment protection rules 129–30
  paradox of copyright 130–31
  publishers in authors’ CMS 133–5
  danger of ignoring conflicting interests of authors and publishers 139–43
  negative impact on commercial users’ ability to obtain comprehensive licences 135–9
Japan 347
Jefferson, R. 80
Jefferson, T. 50
joint commercialization agreements 244–5
joint ownership see collaborative ownership
Joint Recommendation Concerning the Provisions on the Protection of Well-known Trademarks 285–6, 289
journal articles 341, 342–3
jurisprudence 45–54
justification for protection 273–5, 317–18
Kelbrick, R. 288
Kennedy, A. 51
Keynes, J.M. 45
Individualism and collectiveness in intellectual property law

Kilian, A. 103–4
Kitch, E. 281
known rightholders, Google book settlement and 203–4
Krugman, P. 45
Kur, A. 169, 190

labour law 118–19, 323–4, 326
Lagos University ‘Laptop for all Staff’ and Students Project 337
Landes, W.M. 45, 151
lectures, recordings of 321–9
Lendingtree case 301
Lessig, L. 24, 38–9, 156, 157
lex loci protectionis 57–8
liability rules 96–7
collectivization of copyright and 169, 174, 177, 189
libraries 161, 257, 352
academic libraries in Nigeria 338–9
licensing/licences 43
bilateral (cross) licences 75
blanket licences 132, 144
collaborative licensing 90, 91–7, 104, 107, 112
collective licensing 91, 97–103, 104, 107, 112
comprehensive licences 135–9
compulsory licences see compulsory licences
Creative Commons licences 24–6, 29, 30, 100, 202
EU and the Google book settlement 214, 215–16
extended collective licences 35–7, 169
individual licensing contracts 117–27
licences of right 75–7, 84
patent law 72, 111–12
individual ownership 75–83, 84, 106, 112
multiple ownership 89–104, 107, 111–12
typology of access 104–8
restrictive licensing 82–3
special licensing regimes 24–6, 29, 30
trademark merchandising 227, 236–7, 239
likelihood of confusion 222, 296
limitations
copyright, developing countries and digitalization 351–2
EU Trademark Directive 306
litigation costs 230
LO 324
L’Oreal decision 241, 252, 253
Lucazeau and others v. SACEM 63
Lueder, T. 215–16

making available, right of 125
mandatory collective administration 124
Maniatis, S.M. 278–9
Marconi Wireless case 49
market
collectivization of copyright 177–8
division 245
entry barriers 232–3
market failure 6, 9, 274
market players 41–2
cooperation between 17–21
dysfunctional behaviour of 7–8, 10–11, 43
market position
Internet global governance 259
misuse of a dominant position by collecting societies 183–8
market power 61
collective GI marks 250
collectivization of copyright 177–8
dysfunctional exertion of 8, 11–12, 43
McClure, D. 233
McDonald’s 289
Medicines Patent Pool 102
member rights 182, 187–8, 189
merchandising rights 227–8, 231–2
calling for a limited protection of 234–7
history and developments 221–5
recognition under trademark rules 237–9
sport merchandising see sport merchandising
see also trademark merchandising
Merges, R.P. 86–7, 112
Micro Leader Business v. Commission 61
Micropatent 99
misappropriation 6–7, 8, 10, 16–17, 43  
misuse of a dominant position 183–8  
mobile phones  
  Internet access 337  
  ring tones 136–8  
model cars 307–9  
monopolies 281  
  competition law and collecting societies 183–8  
  protection of the Olympic symbol 280–81  
Montagnani, M.L. 32  
moral rights 162–3, 165, 168, 181–2  
moral unfairness 315–16  
MPEG-2 patent pool 94  
MTN 337  
MTN digital library 339  
multinational corporations (MNCs) 255–72  
multiple ownership 12–13, 14, 16–21, 55  
  collaborative ownership 16–17, 21, 84, 85–6, 107  
  cooperative ownership 17–21  
  patent law 84–104, 107, 111–12  
  licensing and openness 89–104, 107, 111–12  
  patent thickets 71, 86–9, 104, 111  
  shared ownership 14–15, 21, 34, 84  
  multiple territorial rights 55–68  
  as an impediment to cross-border transactions 57–60  
  multiple territorial ownerships as a problem for competition 60–66, 66–7  
multi-stakeholder IP Internet governance 266–71  
museums 157–9, 161  
music 134  
  competition law and collecting societies 183–8  
  performance rights and multiple territorial rights 62–6  
multiple recognition 214, 215, 216  
Myriad Genetics case 71, 83, 89  
myvideo 138–9  
Nairobi Treaty on the Protection of the Olympic symbol 279, 282  
natural rights 47  
necessity standard 311, 313–14  
ned to leave free 294  
neighbouring rights 334–5  
network effects 30–31  
non-neutral test of honesty in commercial matters 314–15, 318  
New York Times 45  
New York Times Co. v. Tasini 342–3  
Nigeria  
  Copyright Act 332–5, 341, 346, 351  
  Copyright Commission 335, 342, 353  
  Cyber Security and Data Protection Agency Bill 353–4  
  digitalization 330–55  
  benefits and challenges for copyright owners 339–45  
  education sector and 337–9  
  emerging legal developments 352–4  
  online environment and copyright protection 345–52  
  Internet access 336–7  
  National Information Technology Development Agency (NITDA) 342, 353  
  National Policy on Information Technology 353  
  National Virtual Library Project 338–9  
Nigerian Universities Commission (NUC) 338, 342, 355  
nominate fair use 236  
Non-Commercial Dissemination Provision (NCDP) 32  
non-commercial use 160–62  
non-exclusivity 202  
non-Latin script TLDs 263  
nonobviousness 50–51, 52  
non-registered geographical indications/designations of origin 19  
Nordic countries 35–7  
Nordic labour model 323  
norms 259–60  
North America 335  
see also Canada; United States of America (US)
O’Connor, S. Day 50
offensive use 162–3
Office of Harmonization in the
Internal Market (OHIM) 289
Olympic marketing revenue 279–80
Olympic symbol 278–83, 316, 317, 318
one-stop-shop principle 64, 65
online dissemination of works 346–8
online music services 63–6, 140–42
Opel 307–8
open access 23, 24–6
  gene patenting 76–7, 82, 83, 97, 102, 103, 105, 106–7, 108–9
open access clearinghouses 99, 101
open biotechnology 108–11, 113–14
open content-community 212
open innovation 23
  alternative understanding of 33–4
  impact on competition 30–33
  impact on patent law 26–30
Open Invention Network (OIN) 29
open patent 109
Open Patents 109
open science 109–11
open source 23, 109
open source licences 113
  individual ownership 77–82, 84
  multiple ownership 24–6, 103–4, 104
openness 22–34, 66–7
  collective ownership 66–7
  and copyright law 24–6, 28
  impacts of open approaches on competition 30–33
  and licensing
    individual ownership 75–83, 84, 106, 112
    multiple ownership 89–104, 107, 111–12
  sustainability 113
  open world and proprietary world 42–4
  and patent law 26–30
  opt-in/opt-out regimes 259–60
Organisation for Economic
  Co-operation and Development (OECD) 95, 100
originality 168, 333
orphan works
  emerging US approach to 147–65
  Google book settlement 194, 197, 202–3, 204–5, 211, 212–13, 214–16
Oström, E. 112
out of print books 204, 211, 212
ownership 3–44, 55–6
  collective see collective ownership
  common 38–41
  copyright law in Nigeria 333–4
  digitalization, copyright and 341
  factual 27, 85
  forms of 12–14
  impact on competition in general 9–12
  individual see individual ownership
  multiple see multiple ownership
  multiple territorial ownerships and competition 60–66, 66–7
  university teachers’ IP rights 322–3
paradox of copyright 130–31
parallel imports 58, 60–61
Parson Flexor 310
Paris Convention 243, 305
  Article 6 bis 263, 286, 288–90
  ‘Parmesan’ cheese 21, 250
parody 236
passing off 7–8, 312
patent applicant/holder 73
patent law 71–114
  blocking patents 71, 73–5, 83–4, 106, 111
  experimental use defence to patent infringement 52–3
  impact of open innovation 26–30
  individual ownership 73–84
  licensing and openness 75–83, 84, 106, 112
  injunctions against infringers 51, 52
  multiple ownership 84–104
  licensing and openness 89–104, 107, 111–12
  open biotechnology 104–11
  US jurisprudence 46–7, 48–54
  well-known marks 284–5
Patent Lens 101
patent pools 15, 91–7, 104
patent thickets 71, 86–9, 104, 107, 111
personal computers, ownership of 336–7
personal integrity 329
Peukert, A. 55
PIPRA (Public Intellectual Property Resource) 101
piracy 155
Poland 125
policy, collectivization and 178–9
positive commons 113
Posner, R.A. 45, 151
Post-Delegation Dispute Resolution Policy (PDDRP) 264
Potrykus 95
prices 238
private individuals, and use of orphan works 157
private interests 275, 330–31
producers 130
product choice 239
product standardization 248
professional users 122, 123, 124–5
property 3, 13, 66–7
propertization of IP protection 47, 53
property value as justification for trademark merchandising 225–6, 226–7
trademark protection as 278–9
see also ownership
property rules 167, 189
shift from property rule to liability rule 169, 177
proprietary world vs open world 42–4
PRS 142, 144
public domain status 107, 108
public goods 152
Public Intellectual Property Resource (PIPRA) 101
public interests 152, 189, 274–5, 330–31
public not-for-profit entities 157–9, 161
publishers 130, 133
danger of ignoring conflicting interests between authors and 139–43
presence in authors’ CMS 133–9
endangering the interest of commercial users to obtain comprehensive licences 135–9
punitive damages 163–4
quality control 237
quality mark associations 246–50
RAL (Institute for Quality Protection and Labelling) 247
Random House Inc. v. Rosetta Books LLC 344
razor blades 309–12
ReaLemon case 43
reasonableness test 164
reasonably diligent search 151, 153, 155, 156–7, 162
reconstructed commons 113
recordings of lectures 321–9
Reding, Commissioner 210, 214
reduced power of attraction 297
Reed, M. 303
Reed Elsevier Inc. v. Muchnick 196
registered geographical indications/designations of origin 18–19
registries of orphan works 155–6
regulations 6–9, 43–4
first area (misappropriation) 6–7, 8, 10, 16–17, 43
second area (behaviour of market players) 7–8, 10–11, 17–21, 43
third area (dysfunctional exertion of market power) 8, 11–12, 43
remuneration rights 76–7
combined with exclusive rights in the EC Rental Rights model 120–25, 126
German Copyright Contract Law 119–20
renown 290–91, 293
see also famous marks; well-known marks
representation, adequacy of 207–8
requisite link 294, 295–6
research works 341
residual remuneration rights 122–5
restricted access 75, 77, 102–3, 105, 106–7
restrictive licensing 82–3
rights management collective see collective rights management
individual 35
protection of rights management systems in Africa 348–51
Individualism and collectiveness in intellectual property law

royalty calculation 184–7
royalty collection clearinghouses 99, 100, 102

SACD 137
SACEM 134, 139, 142, 144
safe harbours 156–7
Samuelson, P. 148
Santiago Agreement 64, 65, 141
satellite distribution 57–8
satire 236
Schovsbo, J. 190
Schumpeter, J. 46
Science Commons 101–2
scientific research institutes 110
secondary uses 167, 170
self-regulation 323–4
semi-open access 83, 105, 106
Sen, A. 45
settlement class actions 200–201, 209–10
Severe Acute Respiratory Syndrome (SARS) corona virus pool 95–6
sewing machine patent pool 93
Shapiro, C. 86–7
Share-Alike licence 25
shared ownership 14–15, 21, 34, 84
see also multiple ownership
shared use 105–8
similar products 238
SNP Consortium 101
social interests 181–2
social networking media 256, 325
social partners 323–4, 327
South Africa 286–8, 289
Spain 125
spare parts/accessories 309–12
special licensing regimes 24–6, 29, 30
see also licensing/licences
Special Trademark Issues (STI) group 264, 265
sponsorship, confusion as to 222, 223, 226, 232
sport merchandising 273–318
famous marks 291–7, 317
limits on the trademark right 297–315
defences under Article 6 of the Trademark Directive 303–15
trademark use in Europe 297–302
Olympic symbol 278–83, 316, 317, 318
well-known marks 284–91, 317
sports video games 318
standardized licences clearinghouses 99, 100, 101–2
Stiglitz, G. 45
STIM 144, 185–6
string confusion review 263
student dissertations 341–2
Sweden
Act on the Right to Employee Inventions 323, 324
Copyright Act (1960) 325
employment law 323–4, 326
virtual teachers 321–9
Swedish Employers’ Confederation 324
Sweet, R. W. 71
taking unfair advantage of distinctive character or repute 297
teachers’ copyright exemption 326, 327
teaching, virtual 321–9
teaching materials 324–5
TechEx 101
technological changes 175
see also digitalization
technology exchange clearinghouses 97–9, 99–100, 101, 103
TechTransferOnline 100
tree-step-test 173, 190
tipping phenomenon 49
Tizzano, Advocate General 313
top programme 280, 281
total access see open access
Tournier case 185
toy model cars 307–9
trade secrets (undisclosed information) 11, 27–8
trademark defences 233–4, 235, 236
in common and civil law systems 286–7
trademark use under Article 6 of the Trademark Directive 303–15
well-known marks 286–8
trademark law 8, 10, 282–3
collective trademarks see collective trademarks
essential function of a trademark 304–5, 306
multinationals’ global governance on the Internet 255–72
sport merchandising see sport merchandising
trademark merchandising 219–40
calling for a limited protection of merchandising rights 234–7
current disconnected debate 225–8
flaws of the current positions 231–4
history and development of merchandising rights 221–5
negative consequences of the confusing status quo 228–31
reconciling individualism and collectiveness 237–40
Trademark Post-Delegation Dispute Resolution Policy (PDDRP) 264
trademark use 317–18
in Europe 297–315
understandings of 299–301
traditional knowledge 40
transactions costs 170–71
TransBacter technology 81
transformative uses 160
transparency 243–4, 267
TRIPS Agreement 56, 255, 279, 285, 291–2, 305
undisclosed information 11, 27
Tunis Agenda for the Information Society 266, 267, 268
Twitter 256
Ulmer, E. 57
unauthorized uses 155
experimental use defence to patent infringement 52–3
Unclaimed Works Fiduciary (UWF) 197, 202–3, 205, 206, 207, 210
unconditional access 105, 107
undisclosed information 11, 27–8
unfair competition 11, 274, 290
unions 118–19, 171, 324
Unitaid-Medicines Patent Pool 102
United States of America (US) Affirmation of Commitments (AoC) with ICANN 265
aerospace patent pool 93
class actions 193, 197–201, 204, 209–10
Constitution 46–7
Fourteenth Amendment 199
Copyright Act 158, 343
Copyright Office approach to orphan works 147–65
Catalogue of Copyright Entries (CCE) 210
registration records 209–10
Report on Orphan Works 147–8, 149–56
Copyright Term Extension Act 147
Department of Justice (DoJ) 206, 259
Digital Millennium Copyright Act (DMCA) 350
digitalization and copyright issues 342–4
economics, jurisprudence and competition policy 45–54
exhaustion 59–60
Federal Rule of Civil Procedure 198, 199–200, 208
Federal Trade Commission (FTC) 43, 51
Federal Trademark Dilution Act (1996) (FTDA) 224
Genomic Research and Accessibility Act (2007) 89
labour law and copyright contracts 118–19
perspective on the Google Books Settlement 201, 203–8
Patent and Trademark Office (USPTO) 51, 228
Supreme Court 46
patent jurisprudence 49–52
Technology, Education and Copyright Harmonization Act (2002) (Teach Act) 325
Trade Representative (USTR) 255
Trademark Act (1946) (Lanham Act) 222, 223, 224, 231
Trademark Dilution Revision Act (2006) (TDRA) 224–5
trademark merchandising see trademark merchandising
Trademark Revision Act (1988) 223–4
Trademark Trial Appeal Board (TTAB) 228
Individualism and collectiveness in intellectual property law

Universal Music Publishing 144
universities 110
Nigeria
  benefits and challenges of
digitalization 339–42
digital technology 337–9
projects to promote Internet
access 337
  teachers’ IP rights 322–3
virtual teachers in Sweden 321–9
University of Kansas v. Larry Sinks
230
University of Nigeria, Nsukka (UNN)
339
unwaivable rights 123–4
Urheberrecht 129
user-generated content (UGC) 144–5, 148
users–collecting societies relationship
184–7
uses in accordance with honest
practices 303, 309–12, 313,
314–15, 318

‘Vacation on the Farm’ 242, 246
Van Houweling, M. Shaffer 24
Verizon 257
vertical restraints 60–61

Virtual Library Project (Nigeria) 338–9
virtual teachers 321–9
copyright 325–8

websites, university 337–8
well-known marks 284–91, 317
Wikipedia 25
Windsurfing Chiemsee case 309
World Intellectual Property
  Organization (WIPO) 285–6, 289
Copyright Treaty (WCT) 347
Performances and Phonograms
  Treaty (WPPT) 347
World Summit on the Information
  Society (WSIS) 266–71
Declaration of Principles 266–8, 269
IGF 266, 268–71
principles 267–8, 270–71, 272
Tunis Agenda for the Information
  Society 266, 267, 268
World War II photographs and letters
159
writing for free 158

Youtube 139, 256
Zain 337
Zinox Technologies 337