Index

abstract ideas doctrine 145–6
access see information access
Ackoff, R. 1
ACTA (Anti-Counterfeiting Trade Agreement)
civil rights concerns and ‘three strikes’ rules 216–17
EU membership 1, 16, 18–19, 212, 216, 220, 258, 274
EU rejection 221–2, 280, 287
European protests, preliminary outcomes 221–2
frames of ACTA’s proponents and opponents 210–12
frames of censorship and claims for transparency and liquid democracy 217–18
frames of protests against 215–19
‘freedom’ terminology, use of 215
generic manufacturers of products, effects on 218
knowledge pyramid and effects on enforcement standards 245
personal surveillance concerns 219–20
protests against 208–22
protests by digital civil rights organizations 213, 221–2
public protest succession in Europe 213–14
secret negotiations problems and transparency 212, 217–19, 275–6, 285–6, 294
symbolic significance, understanding of 220
ACTA country club approach 258–83
adjustment cost levels, effects of 262–3
bargaining position, strengthened, and setting of international norms 261–3, 270
club standards, strategic choice of 265–6
criminal enforcement of patent rights, disagreement over 280
disagreements and ACTA Lite version 280
effectiveness of 264
enforcement concerns 258–9
FDI and technology transfer incentives, questionable 270–71
geopolitical reality and lack of equal participation 264
international sanctions’ use 271
key players, exclusion of 267–8
legitimacy questions 269
membership expansion, strategic 275–7
membership expansion, strategic, transaction costs, effects of high 279
membership limitations, criticism of 260–61, 267–9
protection of geographical indications 274, 280
second phase, lack of clarity for 267
transparency and accountability concerns 212, 217–19, 275–6, 285–6, 294
WIPO Development Agenda format suggestion 282–3
WTO comparison 268
ACTA country club approach, non-multilateral era benefits of 276–7
circumvention of multilateral norm-setting process 277
Access to information and knowledge

developing and non-developing countries, disagreement between 280–81
and international trading system 276–82
regulatory fragmentation problems 278–80
ACTA country club approach, TPP (Trans-Pacific Strategic Economic Partnership Agreement) comparison 272–6
civil liberties protection 273–4
incentivization process 273
inclusive nature of 273
negotiation dynamics 274–6
transparency and accountability concerns 275
ACTA and enforcement of intellectual property rights at international level, rethinking 284–98
ACTA contents 293–5
ACTA context 288–93
balanced procedures, measures guaranteeing 293–4
complementary to TRIPS Agreement 291
controversial provisions and differences from international law 294–5
criminal provisions in cases on a commercial scale, problems with interpretation 274, 289, 295
emerging countries as addressees 292–3, 297–8
lessons to be learned from probable failure of 284–7
multilateral rules, calls for stricter 289–90
transparency and accountability concerns 212, 217–19, 275–6, 285–6, 294
Adam, A. 289
aesthetic features and shapes not regarded as trademarks 121–2
Aichholzer, G. 25
Akerlof, G. 199
Akester, P. 165, 168
Alexander, H. 230
Alix, C. 230
anti-dilution legislation 128–31
Aoki, K. 130
Arhel, P. 285
Ariely, D. 201
Arrow, K. 47, 141, 226
Arup, C. 239
Assaf, K. 127
Australia 240
Axhamn, Johan 164–96
Ayooob, E. 285
Ayres, I. 98, 105, 107, 110
Baldwin, C. 2
Baldwin, R. 279
Balkin, J. 105
Bannerman, S. 297
bargaining position
ACTA, and setting of international norms 261–3, 270
reverse liability considerations 103–4
strengthening, and collective management of rights 178
Barton, J. 266
Beebe, B. 121, 129
behavioural economics, and consumer protection 200–201
Beier, F. 119
Beldiman, Dana 1–20
Belgium, Creative Commons and scientific databases 80
Benford, R. 209
Benjamin, S. 140
Benkler, Y. 2–5, 14–15, 23–4, 30, 47, 58, 112, 124–5
Bently, L. 126
Benvenisti, E. 279
Berlin Declaration on Open Access 75–6, 79, 90, 92
Berne Convention 79, 114, 116, 167–9, 176, 189, 266–7
Bessen, J. 51, 226
Beunen, A. 68–9
Bhagwati, J. 279
Birnhack, M. 116
Blakeney, M. 284–5
blocking patents doctrine 108
standard-setting scenario and controversies over patents 104
consumer protection and intellectual property, rebalancing incentives and access 189–207
and behavioural economics 200–201
cloud computing effects 192
‘consumer’ and ‘consumption’, problems over use of terms 196–7
content delivery networks 191–2
contrats d’adhésion 198
copyright and interest group activity 203–4
economic analysis of intellectual property law 193–5, 197–201
first-sale doctrine 196
framework proposal and fragmentation of competencies 205–7
free rider problem 194, 202
information asymmetry considerations 198–9
intellectual capital and access to services 190
limited use licenses 190
market efficiency and consumer protection 199–200
non-rival and non-excludable nature of intangible goods 193–4
privacy and security interests 193
private copies and fair use exceptions 195–6
pro-consumer and pro-competition collectives, suggestion for more representation 205
product liability in common law jurisdictions 197–8
public choice theory and fair use doctrine 204–5
public choice theory and interest group activity 201–5
regulatory intervention and market failures 198
Technical Protection Measures (TPM) and creative uses of digital works, restrictions on 193

Dana Beldiman - 9781783470488
Downloaded from Elgar Online at 01/11/2019 12:11:00PM via free access
Index

equitable remuneration consideration 175
fair use doctrine provision 170
‘legitimate’ and ‘reasonable’ implications 175
‘limitations’ and ‘exceptions’, meaning of 172–3
‘limitations’ and ‘exceptions’ as vehicles for information access 176
musical works and sound recordings, collective licensing 177–8
national legislation provision on management of rights 173–4
new equilibrium proposals 169–70
‘no conflict with normal exploitation’ step 174–5
three-step test 168–76, 241–2, 254
copyright and information access, exceptions, limitations and collective management of rights, collective licensing as information access vehicle 177–84
author benefits and strength of bargaining position 178 and exclusive rights limitations 180–81
extended collective licensing (ECL) 181–4
extended collective licensing (ECL), free negotiations benefits 182–3
extended collective licensing (ECL), and mandatory licensing, differences between 183
mandatory collective management 178–81
and national exercise of the right 180
Correa, C. 118, 128, 133, 165
country club approach see ACTA and TPP country club approach comparisons
Creative Commons (CC) approach 42–5, 215
scientific research data see EU open access conditions, licensing scientific research data under, Creative Commons licenses
Creemers, R. 288
criminal provisions, ACTA 274, 280, 289, 295
‘cultural offence’ considerations, trademark law and public domain 123
customer protection see consumer protection and intellectual property
Czajkowski, A. 249
Daase, C. 212
Darnton, R. 39, 52
David, P. 47
Davison, M. 68, 130
De Beer, J. 224–5
De Sola Pool, I. 56
Deere, C. 277–8
Demsetz, H. 54
Denicola, R. 120
Derclaye, E. 25, 35, 85, 127, 168
D’Erme, R. 285
Devigne, L. 285
Di Giantomasso, F. 130
Dietz, A. 136
digital format considerations 38–9, 48–9, 52, 54, 58–9, 78, 89–91, 115, 193, 252
Dinwoodie, G. 116, 128–30, 134
dispute settlement compulsory licensing and allocative rules 97–8
WTO see WTO (World Trade Organization) dispute settlement distinctiveness requirement 118–21, 124, 137–8
Dogan, S. 115, 129
Downs, G. 279
Drahos, P. 142, 227
Dreyfuss, R. 116, 126, 130–31, 136, 168–70
Drezner, D. 261–6
Dubner, S. 29
Dumortier, J. 26, 36
Dussolier, S. 116

Dana Beldiman - 9781783470488
Downloaded from Elgar Online at 01/11/2019 12:11:00PM via free access
Access to information and knowledge

Dutfield, G. 227, 229, 282

Easterbrook, F. 110

ECJ see European Court of Justice (ECJ)

economic analysis of intellectual property law 193–5, 197–201
economic search costs, trademark law and public domain 115

Eimer, T. 227, 229

Eisenberg, R. 140, 142

Elkin-Koren, N. 42, 141, 196–7

Ellyne, Erika 139–63

Ermert, M. 221, 274

Europe

‘A Single Market for IPRs’ Communication 251

ACTA membership 1, 16, 18–19, 212, 216, 220, 258, 274

ACTA protests 213–14, 221–2

ACTA rejection 221–2, 280, 287

Biotechnology Patent Directive 228–9

Consumer Rights Directive 205–6

consumer-protective measures in IP law 196

Copyright Harmonisation Directive 184

‘Copyright in the Knowledge Economy’ Communication 252

Database Directive 66–7, 69, 72–3

Digital Libraries Initiative 39

droit de suite and mandatory collective management 179

‘Europe 2020 Flagship Initiative Innovation Union’ Communication 252

extended collective licensing (ECL) 183–4

knowledge pyramid 251–2

legal systems in US and EU, comparison of 33–7

mandatory collective management of copyright 179–80

Patent Convention 13


Pirate Party 15

Public Sector Information (PSI) see Public Sector Information (PSI) as open data

rental remuneration and mandatory collective management 179

Reuse of Public Sector Information Directive 77

Satellite and Cable Directive 183–4

Software Patent Directive 229

Vickery Report 26, 33, 53

Europe open access conditions, licensing scientific research data under 6–9, 63–92

Berlin Declaration on Open Access 75–6, 79, 90, 92

Budapest open access Initiative 74

collective rights management schemes, lack of 87

copyright protection 65–6

Database Directive 66–7, 69, 72–3

Digital Peer Publishing Licence (DPPL) 89–91

intellectual property protection 65–73

open access licensing 73–91

open access principles 74–7

Open Data Commons Attribution License (ODC-By) 85–7

Open Database Licence (ODbL) 87–9

OpenAire project 64

OpenStreetMap project 84, 89

originality criteria and copyright 66

Public Domain Dedication and License (PDDL) 84–5

re-utilization right 76–7, 80

standardized contractual conditions of use, benefits of 73–4

‘Towards better access to scientific information’ publication 63–4

Europe open access conditions, licensing scientific research data under, Creative Commons licenses 77–83, 85, 89

attribution element 81, 85

digital or non-digital format, lack of distinction between 78

Dana Beldiman - 9781783470488

Downloaded from Elgar Online at 01/11/2019 12:11:00PM
via free access
dissemination of scientific publications 78–9
national jurisdictions and porting of licenses 79–82
scientific databases 79–83
Zero Universal Dedication (CC0) 83
Europe open access conditions, licensing scientific research data under, sui generis database right 66–73, 80–85
beneficiary of the protection question 68–71
extraction right 71–2
public money and acquisition of rights 69–71
re-utilization right 71–2
substantial investment question 67–8
substantial modification question 72–3
transferable rights and scope of protection 71–3
European Court of Justice (ECJ)
Ajax/Ansul 117
Bezpečnostní softwarová asociace v. Ministerstvo kultury 66
British Horseracing Board 67–8, 72
Circ & Variete Globus Bucureşti 181
Compass-Datenbank 70–71
Directmedia 67, 70–72
Eva Maria Painer v. Standard Verlag GmbH 66
Football Fixtures 67
Infopaq 7, 65–6
Microsoft 242–3
Sieckmann v. Deutsches Patent und Markenamt 124
European Patent Convention (EPC), Technical Boards of Appeal (TBoA) 148–52
Aerotel ltd v. Teleco ltd 162
Circuit Simulation /Infineon Technologies 149–50, 152
Clad Metals LLC 153–4
Comvik 155, 159
Digital Rights Management/ Microsoft 152
Discount certificates/CATALINA 156
Duns Licensing 151, 153
Electronic Multi-Player Poker 157–8, 160
Game Apparatus and Control Method Therefor 158
Game Machine/GAMEACCOUNT 158, 160
Genotype determination/BECKMAN 157
Helix angle 154
Hitachi 150–51
IBM System for Abstracting Documents 152, 158
IGT Poker Game 159
Modellieren eines Prozessnetzwerkes/XPERT 150–51
Nintendo Game Program and Game Apparatus 152, 160
Odour Selection 151, 158
Pension Benefits Systems (PBS) 150–51
Pitney Bowes 152
Programs for Computers 152
Tayside Flow Technologies Limited 154
Ticket Auctioning System/ TICKETMASTER 158
Use of Embryos/WARF 153
Video game/KONAMI 156
exceptions and limitations copyright and knowledge pyramid 252
definitions 131–4, 137, 172–3
three-step test 168–76, 241–2, 254
Access to information and knowledge

as vehicles for information access,
collective management of rights
176
exclusion
absolute exclusion from protection,
trademark law 121–4
distinctiveness requirement, relative
exclusion following 118–21,
124, 137–8
exclusive rights 125–31, 180–81
extended collective licensing (ECL)
181–4
fair use doctrine 133–4, 170, 195–6,
204–5
Farber, D. 202
FDI and technology transfer incentives,
questionable 270–71
Ferner, J. 216
Fezer, K. 126–7, 129, 136
Ficsor, M. 132, 167, 171, 177, 180
first-sale doctrine 196
Fitzgerald, B. 42
flags and armorial bearings, and
trademark law 122
Floridi, L. 297
Floyd, C. 147
follow-on improvers 108
follow-on innovation 241
Foray, D. 191
frame theory 209–12, 215–19
France 80, 179
FRAND (fair, reasonable, and
non-discriminatory) licensing
terms 11, 104–5
Frankel, S. 123
free rider problem 194, 202
freedom of expression and anti-dilution
legislation 130–31
‘freedom’ terminology, use of, ACTA
215
freedom of use definitions, and
trademark law see trademark law
and public domain, freedom of
use, definitions based on
Frickey, P. 202
Frischmann, B. 24, 27, 32, 49, 55–8
G-7 (Group of Seven) 263, 265–6
Galan Galan, A. 26
Galloux, J.-C. 285, 292
Gambino, A. 190, 195
Gangjee, D. 130
Gault, F. 2
Geiger, Christophe 130, 166, 168–70,
173, 177–80, 284–98
Geist, M. 218, 259, 267–9
Geller, P. 189
generic and descriptive signs 119–20
generic manufacturers of products, and
ACTA 218
generic understanding of intellectual
property 222–3
geographical indications 274, 280
land data (cadastral information)
26–9, 31–2, 48
Gerhardt, D. 118
Germany 80, 89–91, 147
H. Welte v. S. Deutschland 53
Gervais, D. 17, 115, 128, 166, 168–9,
173, 177–8, 186, 260, 263–4, 281
Ghidini, G. 195
Ghosh, S. 161
Gibbons, L. 290
Ginsburg, J. 132, 173, 189, 266
Godt, C. 227
Goldstein, P. 175
Golikeri, P. 218
Google Books agreement 39, 58, 95
Gordon, S. 136
governance factors
knowledge pyramid 237–8, 253–6
public money and acquisition of
rights 69–71
regulatory framework 161–2, 198,
278–80
see also international policy
government programs and put-type
options 109
governmental data, protection and
restrictions 34–7, 73–4
graphical representation requirements
123–4
Greene, J. 123
Grendler, P. 190
Greven, M. 212
Index

Griffiths, J. 115, 126
Grosheide, W. 226
Grosse Ruse-Khan, H. 19, 168–70, 241–2, 288–9, 295
Guellec, D. 140–41, 143, 226
Gulasekaram, P. 130
Gurry, F. 259, 297
Haedicke, M. 220
Halbert, D. 227
Hall, B. 226
Handler, M. 128
Hargreaves, I. 3, 171
Harhoff, D. 226
Hatcher, J. 84
Haunss, S. 227
health
  patent-protected medicines, access to 228–9
  public health protection and development of new medicines 244–45, 254
  trademarks for pharmaceutical signs (INNs) 123
  WIPO, Re:Search and BioVentures for Global Health, tropical disease research and treatment 248
see also scientific research licensing
Heffan, I. 45, 53
Helbergen, N. 195–6, 205
Helfer, L. 279, 291
Heller, M. 49–50
Henderson, D. 296
Hermann, R. 236
Hertig, G. 62
Hess, C. 24, 40, 54–5
Hettinger, C. 141, 143
Hienert, C. 14
Hilty, R. 3–4, 96–7, 108–10
Hirshleifer, J. 47
Hoen, E. ‘t 228
Hoeren, T. 286, 293–4
Hofmann, J. 227
Hofmokl, J. 24, 30, 32, 52, 55
Hopkins, R. 279
Hughes, J. 262
Hungary 179
Huston, J. 130
India, and ACTA membership 267, 269–70, 290, 292
information access
  access regimes and ownership, differences between 55–6
  accessibility issues 113, 143–4, 235–6, 255
  asymmetry considerations 198–9
  and consumer protection see consumer protection and intellectual property, rebalancing incentives and access
  copyright and collective management of rights see copyright and information access, exceptions, limitations and collective management of rights
  and exclusive rights of authors 247
  inaccurate information, dangers of spreading 219
  and technology transfer 248
  TRIPS Agreement 238
see also ‘knowledge’ headings; open access models
Information Technology Agreement (ITA) 246–7
infringements, and reverse liability see compulsory licensing and intellectual property, reverse liability considerations
innovation
  management, history of 23–5
  patent holders and revenue seekers, separation of 101–2
  WIPO, access to Research for Development and innovation (aRDi) project 249
see also inventions
intellectual capital, and access to
services 190
intellectual property rights
and compulsory licensing see
compulsory licensing and
intellectual property
and consumer protection see
consumer protection and
intellectual property,
rebalancing incentives and
access
doctrines, designing contours of
11–13
and knowledge pyramid see
knowledge pyramid, intellectual
property rights contribution
politization and knowledge society
see knowledge society and
politization of intellectual
property rights
protection, EU open access
conditions 65–73
see also copyright; patents;
trademarks
interest groups, involvement of 201–5
international policy
access 17–19
cooperation and enforcement effects
and sustainable development
210–12
exclusion of certain official signs
from other countries 122–3
global coherence and knowledge
pyramid 254–5
legal framework, interpretation
guidance 254
legal scholars, involvement of 226–7
sanctions 271
trading system, ACTA country club
approach 276–82
see also governance factors
internet access concerns 216–17,
219–20
inventions
inventive step criterion 155–60
non-inventions (European Patent
Convention) 148–9, 155–7
see also innovation

Italy 31–2
Jaffe, A. 226
Janis, M. 129–30
Janssen, K. 25–6, 36
Japan, ACTA ratification 221
Jeruss, S. 13
Kahneman, D. 200
Kaminski, M. 286, 290
Kampf, Roger 235–57
Kapczynski, A. 4, 229
Karaganis, J. 297
Karnell, G. 182, 184
Keller, P. 79
Kenya 241
Keohane, R. 224
Kieff, F. 141
Kim, S. 268
knowledge pyramid, intellectual
property rights contribution
235–57
access challenges, governance
responses and quick solutions
255
access to knowledge, understanding
of 235–6
and ACTA, effects on enforcement
standards 245
copyright exceptions and limitations,
development of 252
digital libraries and innovative
licensing solutions 252
global policy coherence 254–5
governance requirements 253–6
international legal framework,
interpretation guidance 254
key indicators for quality and access
impact, need for 253
open access models to increase access
to knowledge 252
patent trolls 101–3, 256
political involvement and governance
considerations 237–8
and technological change 239–41
and technological change and
follow-on innovation 241
<table>
<thead>
<tr>
<th>Index</th>
<th>309</th>
</tr>
</thead>
<tbody>
<tr>
<td>and TRIPS Agreement see WTO (World Trade Organization), Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, knowledge pyramid</td>
<td>see also information</td>
</tr>
<tr>
<td>WHO cooperation 250–51, 253–4</td>
<td>Koskinen-Olsson, T. 181</td>
</tr>
<tr>
<td>WIPO initiatives 247–50, 253–4</td>
<td>Kozinski, A. 118, 131</td>
</tr>
<tr>
<td>see also information</td>
<td>Kravets, D. 216</td>
</tr>
<tr>
<td>knowledge society and politicization of intellectual property rights 208–32</td>
<td>Krikorian, G. 4, 229, 236</td>
</tr>
<tr>
<td>ACTA see ACTA (Anti-Counterfeiting Trade Agreement)</td>
<td>Kuhn, T. 201</td>
</tr>
<tr>
<td>civil and criminal enforcement procedures 211–12</td>
<td>Kunz-Hallstein, H. 119</td>
</tr>
<tr>
<td>civil society challenging intellectual property rights 228–9</td>
<td>Kur, A. 125, 128–9, 172–4, 225</td>
</tr>
<tr>
<td>Creative Commons approach 215</td>
<td>Kurz, C. 220</td>
</tr>
<tr>
<td>frame theory overview 209–10</td>
<td>Kyst, M. 182</td>
</tr>
<tr>
<td>generic understanding of intellectual property 222–3</td>
<td>Ladas, S. 122</td>
</tr>
<tr>
<td>holders’ community, conflicts in 225</td>
<td>Landes, W. 3, 4, 47, 203, 226</td>
</tr>
<tr>
<td>ideological components 223</td>
<td>Lange, D. 112</td>
</tr>
<tr>
<td>inaccurate information, dangers of spreading 219</td>
<td>Latif, A. 298</td>
</tr>
<tr>
<td>international cooperation and enforcement effects, and sustainable development 210–12</td>
<td>Latif, L. 223</td>
</tr>
<tr>
<td>international law scholars, involvement of 226–7</td>
<td>Lee, N. 145–7, 149, 161–2</td>
</tr>
<tr>
<td>internet access concerns 216–17, 219–20</td>
<td>Lefranc, D. 19, 295</td>
</tr>
<tr>
<td>masculine epistemic community interest 214</td>
<td>legal systems in US and EU, comparison of 33–7</td>
</tr>
<tr>
<td>over-specialization concerns 223</td>
<td>‘legitimate interests’ test, trademark law and public domain 131, 133–4</td>
</tr>
<tr>
<td>patent-protected medicines, access to 228–9</td>
<td>Lehmann, M. 127</td>
</tr>
<tr>
<td>politicization, reasons for 222–9</td>
<td>Leistner, M. 127</td>
</tr>
<tr>
<td>smartphone and tablet patent wars 230</td>
<td>Leith, P. 162</td>
</tr>
<tr>
<td>structural processes involved 224</td>
<td>Lerner, J. 226</td>
</tr>
<tr>
<td>TRIPS Agreement, ambiguities in 224–5</td>
<td>Lessig, L. 2–4, 23–4, 49, 229</td>
</tr>
<tr>
<td>Web 2.0 use 214</td>
<td>Leval, P. 130</td>
</tr>
<tr>
<td>younger generation, significant interest shown by 214</td>
<td>Levine, D. 194, 275, 286</td>
</tr>
<tr>
<td>licensing collective see copyright and information access, exceptions, limitations and collective management of rights, collective licensing as information access vehicle commercial and non-commercial, choice between 43–5 compulsory see compulsory licensing and intellectual property Public Sector Information (PSI) as open data 36, 41–3</td>
<td>Levitt, S. 29</td>
</tr>
<tr>
<td>Levy, R. 121</td>
<td>Lewis, M. 272</td>
</tr>
</tbody>
</table>
scientific research and open access
see EU open access conditions,
licensing scientific research data
under
special compulsory licences to export
medicines 244
unported 79
limitations see exceptions and
limitations
limited term of protection, trademark
law and public domain 114–18
Litman, J. 112, 118, 131
Long, C. 51
Longo, A. 31
Loughlan, P. 125
Lucchi, N. 191
Lue, H. 121
Lunney, G. 143
Lutz, K. 191
McCarthy, J. 130
MacFarlane, R. 121
McGeeveran, W. 130
McGowan, D. 104
Machlup, F. 142
McManis, C. 285–6
Maggiolino, M. 60
Maier, G. 136
Malkawi, B. 292
management of rights, collective see
copyright and information access,
exceptions, limitations and
collective management of rights
Mancur, O. 202
Maracke, C. 79
markets
efficiency and consumer protection
199–200
foreclosures and economic growth
issues 7–8
incentives for provision of non-rival
goods 48–50
regulatory intervention and market
failures 198
transparency, trademark law and
public domain 115
Marsnik, S. 147

Martin, B. 141, 143
Martin, D. 212
Marzetti, Maximiliano 189–207
Maskin, E. 51
Maskus, K. 270–71
Matthews, D. 224, 258
Mattson, R. 136
May, C. 227, 282
Mazzoleni, R. 226–7
Melamed, A. 10–11, 51, 97–100, 186
Melullis, K. 147–8
Merges, R. 51–2, 100, 125, 136, 186
Merkel, W. 218
meteorological data and value
measurement 27
Metzger, A. 213, 285
Meurer, M. 226
Mezzanotte, F. 197
Michael, G. 260
Miller, J. 104
Mizaras, V. 225
Morando, F. 42
Morris, M. 105, 109
Moskin, J. 125, 136
Mossink, W. 79
Mullainathan, S. 200
Multilateral Agreement on Investment
(MAI) 296
multilateral rules
calls for stricter 289–90
non-multilateral era, country club
approach comparisons see
ACTA country club approach
Murmans, J. 227
museums and archives’ metadata 28,
38–9
musical works and sound recordings
177–8
Musso, A. 189–90
Musungu, S. 282
Naím, M. 264
national legislation 79–82, 147, 173–4,
180
see also individual countries
Nelson, R. 226–7

Dana Beldiman - 9781783470488
Downloaded from Elgar Online at 01/11/2019 12:11:00PM
via free access
Index

Netherlands 69–70, 80–81

Landmark 69–70

Newbery, D. 32, 35, 51, 57

Nordic countries 181–4

Nye, J. 224

OECD, Multilateral Agreement on Investment (MAI) 296

Ohly, A. 127–8, 222–3

Okediji, R. 3, 73, 166, 168–70, 172–6, 278–9

Oliver, J. 132

open access models 252

Open Data Commons Attribution License (ODC-By) 85–7

Open Database Licence (ODbL) 87–9

and PSI see Public Sector Information (PSI) as open data

and scientific research licensing, EU see EU open access conditions, licensing scientific research data under

see also information access

OpenAire project 64

OpenStreetMap project 84, 89

Ostrom, E. 24, 40, 54–5

Pacek, G. 122

Padoa Schioppa, T. 62

Pallotta, C. 121

patent eligibility 139–63

abstract ideas doctrine 145–6

access limitation and scarcity of intellectual products 143–4

contract theory 142–3

EU harmonization 147–8

functions of, and normative considerations 144–6

‘further technical effect’ doctrine 158–60

incentive theory and welfare maximization 141–2

innovation and invention, distinction between 140

invention, negative definition of 149

inventive step criterion 155–60

national offices and forum shopping 147

non-inventions (European Patent Convention) 148–9, 155–7

patentability as tuning mechanism 144–6

practice of 147–55

rationale of 140–44

regulatory framework, future considerations 161–2

social policy consideration 144–6

subject matter and threshold limits 145

Technical Boards of Appeal (TBoA) cases see European Patent Convention, Technical Boards of Appeal (TBoA)

‘technical character’ requirement 149–53, 158

technical character and technical purpose, definitions of 153–8

patents

blocking patents doctrine 108

compulsory licensing 108

compulsory licensing and controversies over patents 104

copyright and patent law comparison 116, 125, 127

disclosure requirements, TRIPS Agreement 241, 255

European Patent Convention see European Patent Convention

innovative patent holders and revenue seekers, separation of 101–2

intellectual property holders’ community, conflicts in 225


patent trolls 101–3, 256

patent-protected medicines, access to 228–9

PATENTSCOPE, WIPO 249

‘put’ option and patent office buy-back 109–10

smartphone and tablet patent wars 230

software patents 229
Access to information and knowledge

Substantive Patent Law Treaty (SPLT) negotiations 225
WIPO, Access to Specialized Patent Information (ASPI) project 249
WIPO, patent landscape reports 248, 250
see also copyright; intellectual property rights; trademarks
Patterson, C. 45, 53
Pelletier, J. 286
Penrose, E. 142
Peritz, R. 141
Peukert, A. 112, 119, 122, 135
Pflüger, M. 119, 122
Phillips, J. 116, 119–20
Pila, J. 144–5, 147–9, 155, 161
Pires de Carvalho, N. 128
Plant, A. 142–3
Polinsky, M. 199
politicization of intellectual property rights, and knowledge society see
knowledge society and politicization of intellectual property rights
Pollaud-Dulian, F. 136
Posner, R. 3, 47, 197, 203, 226
private copies and fair use exceptions 195–6
protests against ACTA 208–22
PSI see Public Sector Information (PSI) as open data
public choice theory 201–5
public domain, and trademark law see trademark law and public domain
Public Domain Dedication and License (PDDL) 84–5
Public Private Partnership (PPP) agreements 39, 52
Public Sector Information (PSI) as open data 7, 23–62
access regimes and ownership, differences between 55–6
accumulated data, value of 28–9
asset lists, availability of 40–41
chain of authorizations 44
complementarity and non-rivalry in downstream output 31–2, 47, 50–51, 56–8
contractually granted exclusivity, adverse impact of 51–2
copyleft feature and conditional reproduction 45–6, 53
Creative Commons (CC) licenses and sui generis database 42–5
cross-sectorality of PSI re-uses 30–31, 33–4, 41–2, 48
digital data as property 48–9, 54
digital format considerations 38–9, 52, 58–9
formats, interoperability and ease of use 39–40
governmental information 26–7, 29, 31–2
governmental data, copyright restrictions (EU) 35–6
governmental data, lack of copyright (US) 34, 37, 73–4
governmental data, privacy and data protection laws (EU) 36–7
governmental data, re-use restrictions (EU) 34–7
governmental data, trading funds (EU) 35
innovation management, history of 23–5
inputs for goods of significant non-market value 32
intellectual property protection, ownership of 41
land data (cadastral information) 27–9, 31–2, 48
legal systems in US and EU, comparison of 33–7
licenses, commercial and non-commercial, choice between 43–5
licensing conditions 36, 41–3
market incentives for provision of non-rival goods 48–50
mechanics of PSI 25–8
meteorological data and value measurement 27
museums and archives’ metadata 28, 38–9
network-driven cooperative projects 24
open and restricted access alternatives 54–5
privileged and non privileged information, boundaries between 33
procurement alternative 48, 52, 54
production non-rivalry 32
Public Private Partnership (PPP) agreements 39, 52
Public Sector Information (PSI) Directive 34–6, 40, 42, 59–60
re-user profits 44–5
regional licensing terms, need for single set 41–3, 52
restricted access, private control and market exchanges 57–9
Reuse of Public Sector Information Directive 77
tragedy of the Anticommons 50–51, 53
underprovision problem and IP-based ownership 49–51, 53–4
value unpredictability of downstream uses 29–30
wealth maximization and access regimes 54–60
wealth maximization and ownership regimes 46–54
welfare enhancing outcomes, possibility of 53, 59–60
Puchala, D. 279
‘put’ options 106–10
Rai, A. 140
Ramsey, L. 120–21, 131
Raustiala, K. 226
re-utilization right 44–5, 71–2, 76–7, 80
regulatory framework 161–2, 198, 278–80
legal systems in US and EU, comparison of 33–7
see also governance factors
Reichman, J. 3, 5, 10, 23, 51–2, 60, 73, 96
Rein, M. 209–10
Reinbothe, J. 172–3
Rens, A. 292
reproduction, protection against (anti-dilution legislation) 128–31
reverse liability, and compulsory licensing see compulsory licensing and intellectual property, reverse liability considerations
Richardson, M. 131
Ricketson, S. 168, 170, 173–5, 189, 266
Ricolfi, Marco 23–62
Rieger, F. 220
Rifkin, J. 191
Riis, T. 180, 182, 184–6
Risch, M. 101
Rizzello, S. 47
Robinson, D. 25, 41
Ronga, G. 123
Rose, C. 108
Rosén, J. 181
Russia, and ACTA membership 267, 269–70, 290, 292
Rydning, C. 181–2
Saez, C. 259, 281, 297
Sakulin, W. 130
Salzberger, E. 117–18, 141
Sambuc, T. 119
Samuelson, P. 112–13, 193
sanctions 271
Schechter, F. 129
Scherer, F. 227
Schneider, Ingrid 162, 208–32
Schön, D. 209–10
Schott, J. 276–7
Schovsbo, J. 174, 177–8, 180, 182, 184–5
Schroeder, J. 127
Schultz, J. 193
scientific research licensing see Europe open access conditions, licensing scientific research data under, see also health
Scotchmer, S. 226
Scott, H. 62
Sell, S. 224–5, 227, 274, 277, 290–91
Senftleben, Martin 112–38, 170, 172, 196
Seuba, X. 294
Access to information and knowledge

Shadlen, K. 227
Shams, H. 263
Sharma, A. 269
Sichelman, T. 140, 146
Siegrist, H. 227
Simon Phima, I. 125–6, 129
Sirinelli, P. 169
Smith, V. 200
Snow, D. 209
social welfare 53, 59–60, 141–2, 144–6, 242
software patents 229
South Africa
Hazel Tau & Others v. GSK and Boehringer Ingelheim 243
TAC v. MSD 243
South-South collaboration, call for 281
specialization, over-specialization concerns 223
Spinello, R. 142
Spoor, J. 69, 128
Stallman, R. 222
Stamatoudi, I. 297
Stazi, Andrea 189–207
Sterckx, S. 147, 149–50, 152–3, 156–7, 160
Stieper, M. 285
Stiglitz, J. 257
Strasser, M. 115, 136
Stratton, B. 121
Stross, R. 29
Suber, P. 5, 75
Substantive Patent Law Treaty (SPLT) negotiations 225
sui generis database
and Creative Commons (CC) licenses 42–5
and scientific research licensing see EU open access conditions, licensing scientific research data under, sui generis database right
Sunstein, C. 201
Suthersanen, U. 227
Synnodinou, T.-E. 66
Takagi, Y. 247, 249
Tapsott, D. 14
Taubman, A. 241, 243
technology
access and e-commerce 245–6
access provisions, TRIPS Agreement 238
cloud computing effects 192
digital format considerations 38–9, 48–9, 52, 54, 58–9, 78, 89–91, 115, 193, 252
evolution effects 189–93
‘further technical effect’ doctrine 158–60
internet access concerns 216–17, 219–20
software patents 229
Technical Boards of Appeal cases see European Patent Convention, Technical Boards of Appeal (TBoA)
technical information access, WIPO 247
Technical Protection Measures (TPM) 193
technological change, and knowledge pyramid 239–41
technological convergence effects 192
Technology and Innovation Support Centers (TISCs), WIPO 249
transfer 240–41, 245–6, 248, 270–71
Web 2.0 use 214
telle quelle protection, trademark law
and public domain 119, 122
Thaler, R. 200–201
Thambisetty, S. 147
Thomas, R. 147
three strikes rule, civil rights concerns 216–17
three-step test 168–76, 241–2, 254
Thurow, L. 191
Timbers, L. 130
Torremanns, P. 226
TPP see ACTA country club approach, TPP (Trans-Pacific Strategic Economic Partnership Agreement) comparison
trademark law and public domain
112–38
absolute exclusion from protection
121–4
accessibility issues and public
domain 113
aesthetic features and shapes not
regarded as trademarks 121–2
armorial bearings and flags 122
copyright and patent law comparison
116, 125, 127
‘cultural offence’ considerations 123
digital environment 115
distinctiveness requirement, relative
exclusion following 118–21, 124, 137–8
economic search costs 115
generic and descriptive signs 119–20
graphical representation
requirements 123–4
indefinite renewal rule 115
international law and exclusion of
certain official signs from other
countries 122–3
legal status definitions 113–24
limited protection effects 115
limited term of protection, no
contribution on basis of 114–18
market transparency 115
public domain concept 112–35
public domain preservation
instruments 124
public domain in relation to
trademark law 135–8
renewability, TRIPS Agreement
114–15, 117
sign cancellation period after non-use
116–17
telle quelle protection 119, 122
trademark rights as vehicle to
re-monopolize material 113
World Health Assembly and
pharmaceutical signs (INNs),
nonproprietary names 123
trademark law and public domain,
freedom of use, definitions based
on 113–14, 124–35
confusion, protection against 126–7
cultural meaning superseded by
commercial messages 127
exclusive rights, inherent limits of
125–31
fair use of descriptive terms 133–4
freedom of expression and
anti-dilution legislation 130–31
‘legitimate interests’ test 131, 133–4
limited exceptions 131–4, 137
protection against reproduction
(anti-dilution legislation)
128–31
public domain, inherent limits and
limited exceptions for
preserving 134–7
trademarks as metaphors, and
consumer influence 131
‘use in the course of trade’
prerequisite 125–6
use outside the realm of trade 126
trademarks
counterfeiting or copyright piracy on
a commercial scale 289, 295
TRIPS compatibility of Australia’s
Tobacco Plain Packaging Bill
240
see also copyright; intellectual
property rights; patents
tragedy of the Anticommons 50–51, 53
transferable rights and scope of
protection, scientific research data
71–3
transparency and accountability
concerns, ACTA 212, 217–19,
275–6, 285–6, 294
TRIPS Agreement see WTO (World
Trade Organization),
Trade-Related Aspects of
Intellectual Property Rights
(TRIPS) Agreement
Tullock, G. 202
Tushnet, R. 197
Uhlir, P. 23, 25, 51–2, 60
UK 8, 43, 147–8
Ullrich, H. 50, 143–4, 146, 161, 226
US
Access to information and knowledge

ACTA membership see ACTA country club approach
Am. Broad. Cos. v. Aereo 5
Bilski v. Kappos 13
Copyright Code 73–4, 79
copyright and Fair Use Doctrine 170
Copyright Term Extension Act (CTEA) 203–4
eBay v. Merc Exchange 102–3
Eldred v. Ashcroft 170, 204
Feist Publications v. Rural Telephone Service Co. 74
first-sale doctrine 196
free trade agreements (FTAs) 262–3
Freedom of Information Act 34
governmental data, lack of copyright 34, 37, 73–4
Jumpstart Our Business Startups Act 275
legal systems in US and EU, comparison of 33–7
lemon laws and Magnuson-Moss Warranty Act 198
patent trolls 101–2, 103, 256
Spur Industries v. Del E. Webb Development 100–103
Stop Online Piracy Act (SOPA) 1
Trade Act monitoring mechanism 271
Washington Declaration 213
WNET. Thirteen v. Aereo 5

Van der Wal, B. 25–6, 42
Van Eechoud, M. 25–6, 42, 65
Van Gompel, S. 185
Van Hoboken, J. 205
Van Potteslberghe de la Potterie, B. 140–41, 143, 226
Vanovermeire, V. 127
Verkade, D. 128
Vickery, G. 26, 33, 53
Vivant, M. 140, 142, 289
Volman, Y. 33
Von Hippel, E. 2, 14
Von Lewinski, S. 172–3, 175–6, 179–80
Waelde, C. 84

Wager, H. 237, 243
Wang, J. 278
Watal, J. 264
wealth maximization
and access regimes 54–60
and ownership regimes 46–54
Weatherall, K. 269, 280, 285, 290
Weinreb, L. 136
Weiser, P. 186
Weiss, P. 46
Wellons, P. 62
WHO (World Health Organization) 250–51, 253–4
Wikipedia 44
Wilf, S. 118, 131
Williams, A. 14
WIPO (World Intellectual Property Organization)
access to Research for Development and innovation (aRDi) project 249
Access to Specialized Patent Information (ASPI) project 249
Development Agenda 248, 250, 281–3
documentation procedures 294
information access and exclusive rights of authors 247
Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks 128–9
knowledge pyramid initiatives 247–50, 253–4
patent landscape reports 248, 250
PATENTSCOPE 249
Re:Search and BioVentures for Global Health, tropical disease research and treatment 248
South-South collaboration, call for 281
Standing Committee for Copyright and Related Rights (SCCR) 249–50
technical information access 247
Technology and Innovation Support Centers (TISCs) 249
Index

trademarks for pharmaceutical signs (INNs), nonproprietary names 123

WTO (World Trade Organization)
ACTA country club approach 268
documentation procedures 294
e-commerce Work Programme 245–6
GATT transformation and club adaptation process 266
Information Technology Agreement (ITA) 246–7
Protocol Amending the TRIPS Agreement 244

WTO (World Trade Organization), dispute settlement
Australia – Certain Measures Concerning Trademarks Applicable to Tobacco Products 240
Business Exception 174–6
Canada – Protection of Pharmaceutical Products 132, 242, 254
China – Measures affecting the protection and enforcement of intellectual property rights 268, 288–9, 295
EC – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs 132–4, 174, 254, 262
United States – Section 110(5) of Copyright Act 174, 254
United States – Section 211 Omnibus Appropriations Act of 1998 118
United States – Sections 301–310 of the Trade Act of 1974 271

WTO (World Trade Organization), Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement
ambiguities in 224–5
and club standards 263–4
as complementary to ACTA 291
copyright law, three-step test 168–76, 241–2, 254
copyright and patent protection 116
FDI incentives, questionable 270–71
harmonized standards, criticism of 262
knowledge society and politicization of intellectual property rights 224–5
minimum rules on enforcement 288–9
non-multilateral origins 277–8
and Substantive Patent Law Treaty (SPLT) negotiations 225
trademark counterfeiting or copyright piracy on a commercial scale (Article 61) 289, 295
trademark distinctiveness requirement 118, 120
trademark protection against reproduction (anti-dilution legislation) 128
trademark renewability 114–15, 117
trademarks, fair use of descriptive terms 133–4
trademarks, ‘legitimate interests’ test 131, 133
trademarks, limited exceptions to the rights conferred by 131–2
WTO (World Trade Organization), Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and knowledge pyramid 238–47
anti-competitive behaviour (Articles 8(2) and 40(2)) 242–3
Bolar exception 242
compatibility of Australia’s Tobacco Plain Packaging Bill 240
e-commerce and technology access, discussion on 245–6
exceptions and limitations and three-step test 168–76, 241–2, 254
health protection and development of new medicines 244–5, 254
Members’ platform to air views 245
patents and disclosure requirements (Article 29) 241, 255
Preamble objectives 239–40
public interests protection and socio-economic and...
Access to information and knowledge

- technological development (Article 8) 240
- rights and obligations balance and social and economic welfare (Article 30) 242
- special compulsory licences to export medicines (Paragraph 6 System) 244
- technology transfer to least developed countries (LDCs), encouragement of (Article 66(2)) 240–41, 245–6, 271

Zaremberg, G. 202
Zeno-Zencovich, V. 197
Zero Universal Dedication (CC0), Creative Commons licenses 83
Zimmerman, D. 112