Abbott, F. 158, 177, 182
Abdel-Latif, A. 206, 562, 605–6, 670
Abusive claims, copyright 352
Abusive use of rights, dangers of, new social contract for protection of intangibles 664, 671–2
Access rights 13–14, 281, 323–4, 445–6
Access to Knowledge (A2K), cultural rights and copyright 562, 564, 565, 575
ACTA see Anti-Counterfeiting Trade Agreement (ACTA)
Addor, F. 548
Adelman, M. 262
Adeney, E. 392
Administration rights 183–4, 186, 274–5, 281, 443–4
Advertising 368, 374
Afori, O. 94
African Charter on Human and Peoples’ Rights 610–11, 668
Aid funding and development agendas, Pacific island states 645–6
Aikawa-Faure, N. 557
Akandji-Kombe, J.-F. 2
Akerlof, G. 546
Akester, P. 181
Alexy, R. 26, 29, 50
Alford, W. 474
Allen, A. 405
Alonso, A. 544–5
Ambiguity
bilateral and multilateral legal levels 187–92, 194–5
global constitutional framework 665–72
see also language
Anaya, S. 627
Anderman, S. 417
Andersen, R. 540
Anderson, D. 55, 56
Anderson, G. 128
Anderson, R. 150, 152
Andresen, T. 544
Angelopoulos, C. 181
Anti-Counterfeiting Trade Agreement (ACTA) 15, 176, 179
digital copyright see digital copyright
enforcement measures, Anti-Counterfeiting Trade Agreement (ACTA)
enforcement procedures, bilateral and multilateral legal levels 192
Health rights and patents 507–8
Antons, C. 631
Aoki, K. 362
Aplin, Tanya 405, 421–37
appeals
patent Appeal Boards see European Patent Office (EPO) Boards of Appeal
trade marks see European Trade Mark and Designs Office (OHIM), fundamental rights, right to effective remedy before a tribunal
Arewa, O. 561
Arezzo, E. 417
Argentina
Ediciones de la Flor SA v. Fontanarrosa Franco 213, 682–3
human rights legislation 212–13, 215
Novartis Pharma AG v. Monte Verde 212
arts, freedom of 233, 336, 597–8, 687–8
see also cultural rights
Arup, C. 502
Ascensão, J. 251
Assaf, K. 356, 359, 366, 371
Atik, J. 472
Atkinson, B. 237
Austin, G. 4, 7, 103, 109, 132–3, 135, 142–3, 161, 167, 458, 472, 523, 563, 595, 605, 669, 672
Australia
Commonwealth of Australia v. Tasmania 515–17
JT International v. Commonwealth of Australia 516
Tobacco Plain Packaging Act see public health and trademarks, tobacco plain packaging law
trade secrets as property 423
Yumbulul v. Reserve Bank of Australia 653
Austria
Oberster Gerichtshof 133, 134–5, 148

691

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
692  Research handbook on human rights and intellectual property

patent law 225–6
authors
copyright and authors’ rights 91–5, 120–21
digital copyright, underlying works and
derivative creations 461–2
disability and right of author to benefit
from moral and material interests 579,
581–2, 585, 592, 593–4, 596, 599
follow-on inventors and authors, balancing
interests 159
Latin America, author’s right limitations
245
moral and material interests 395, 569
Universal Declaration of Human Rights
(UDHR), copyright and rights of
authors 340
US, Authors Guild v. Hathi Trust 600
see also cultural rights
autonomy v. ownership, new social contract
for protection of intangibles 675–6
Ávila Plaza, Charlene de 224, 236–52
Aylwin, N. 556
Baker, B. 10–11
Bala Ravi, S. 510
Baldwin, R. 473
Ballestre, R. 668
Banning, T. van 125
Baraliuc, I. 508
Barbosa, Denis Borges 224, 236–52
Barendt, E. 333
Barnard, C. 62
Barnes, C. 578, 582, 583, 597
Barrett, A. 620
Barsh, R. 551
Beckett, J. 76
Beebe, B. 366
Beijing Communiqué, ICANN Top Level
Domain process 379, 380–84, 386
Beiter, K. 423, 666, 669
Bekou, O. 64
Belgium, copyright and conflict of interests
226–7
Benkler, Y. 355
Bently, L. 422, 425, 426, 432, 545, 678
Benvenisti, E. 473
Berard, L. 550, 558
Berman, H. 467
Berman, P. 70
Berne Convention 91–2, 95, 118, 156–7
authors’ moral interests 395
‘minor reservations’ doctrine and captioning
of text 584

see also WIPO
Besselink, L. 106
Beyleveld, D. 107, 108
Bhagwati, J. 473
bilateral and multilateral legal levels,
substantive and operational aspects
173–200
administrative remedies 186
ambiguous relations 187–92
ambiguous relations, vagueness and
imbalance 187–8
Anti-Counterfeiting Trade Agreement
(ACTA) 176, 179
Anti-Counterfeiting Trade Agreement
(ACTA), enforcement procedures 192
conflict of policies 176
criminal enforcement 186–7, 192, 193–4
equality of arms and measures for the
preservation of evidence 190–92, 196
fair trial right 188–90
International Covenant on Civil and
Political Rights (ICCPR) 184–5
international organisations, courts and
treaties 175–7
mutually supportive relations between
intellectual property and human rights
184–7
WIPO Development Agenda 176
WTO, dispute settlement system 154, 160,
176, 212
bilateral and multilateral legal levels,
substantive and operational aspects,
conflictive relations
addressing 194–200
human rights as erga omnes obligations
198, 199, 200
jus cogens norms 197–8
legality principle 192–3
norms on conflict of treaties 196–200
norms on Treaty interpretation, relevance of
195–6
objective nature of human rights treaties
198–9
‘private financial gain’ and criminal
measures 193–4
wilful piracy or counterfeiting on a
commercial scale (US) 193
bilateral and multilateral legal levels,
substantive and operational aspects,
intellectual property enforcement and
human rights 178–84
border trade and patented medicines
restrictions 180–81

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
competition effects 182

court access and right to a fair trial 180, 188–90

economic impact 182

freedom of speech and the right to privacy, impact on 180

justice administration rights 183–4

moral and material benefits resulting from scientific, literary or artistic production 183–4

social and economic rights, focus on 178–80, 181

bilateral and multilateral legal levels, substantive and operational aspects, preferential trade agreements (PTAs) 173–5, 176

enforcement provisions 185–6, 187–8

equality of arms and measures for the preservation of evidence 190–92, 196

fair trial right 188–90

imbalance and ambiguity 187–8, 194–5

policy incoherence examples 177

technological measures, criminal measures’ response 193

biotechnology

DNA, isolated genomic, and patents 254, 257–9, 262–3

EU Biotechnology Directive, EU 76, 107–8, 126–7, 146, 486–7, 491–2, 530

patents, effects on innovation and R&D 529–30

patents and human dignity 481–2, 484–90

see also genetics; technological measures

Birnhack, M. 2, 417

Black, R. 548

Blackburn, R. 484

Blake, J. 555

Blakeney, M. 15, 179

Blanke, H. 286

Bleckmann, B. 30

Böckenförde, E. 134

Bodenhäuser, G. 429

Boisard, P. 548

Bond, P. 201

Bondia, F. 676

border control

disability and cross-border exchange of works in accessible format 588

Internet measures 466

patented medicines restrictions 180–81

Born, C. 364, 407

Borras, S. 313

Bothe, M. 30

Bouvel, A. 366

Bowman, M. 599

Box, J. 672

Boyle, J. 169, 355, 562

Bramley, C. 546, 551

Brandtner, B. 55

Brazil

Constitution and right to health 502–5

copyright collecting societies 248–9

freedom to exercise a trade or profession 240

health and life as priorities 247–8

health rights and patents policy change 502–5

intangible cultural heritage protection 556

IP protection, Constitutional requirements 244–5, 683

IP rights as private monopolies 241–2

originality requirement 245

producers and performers and IP rights holders, relations among 249

trademark rights 241

Brems, E. 39, 47, 342

Brewer-Cari, A. 237

Bridis, T. 467

Bridy, A. 457, 468, 474

Brinckerhoff, C. 532

broadcasting

cinematographic work, exploitation rights 76–8

EU Television Broadcasting Directive 231, 343–4

Bronckers, M. 424, 425, 428, 429–30, 433

Broude, T. 548, 557–8

Brown, Abbe 179, 416, 417, 419, 577–602

Brown, I. 15, 179

Brownsword, R. 107, 108

Buchanan, J. 546

Buergenthal, T. 668

Bultrini, D. 509

Burkholder, J. 169

Burrell, R. 104, 354, 373, 431, 671, 672

Busaniche, B. 179

business, freedom to conduct see freedom to conduct a business

Calabresi, G. 109

Calliess, C. 679

Cameron, C. 578

Cameron, H. 646

Canada

Canada–Colombia FTA 210
694 Research handbook on human rights and intellectual property

CCH Canadian Ltd. v. Law Society of Upper Canada 133, 145
Entertainment Software Association 147, 148
Théberge v. Galerie d’Art du Petit Champlain 138, 682
Cann, W. 519
Cannizzaro, E. 62–4
Carr, J. 639
Carrier, M. 431, 665
Carss-Frisk, M. 668
Carter, E. 181
Carvalho, N. 240
Casadevall, J. 333
Celenza, A. 169
Central America Free Trade Agreement (CAFTA), right to health 209
Cerda Silva, J. 15
CESCR see UN Committee on Economic, Social and Cultural Rights (CESCR)
Chadwick, M. 64
Chang, H. 655
Chapman, A. 92, 461, 592
Charters, C. 627
Chiarolla, Claudio 521–43
Chile, international IP agreements, constitutional status 243
Cho, S. 473
Chon, M. 606, 613, 614, 618
Christoffersen, Jonas 19–37
cinematographic work, exploitation rights 76–8
see also cultural rights
citation rights and freedom of the arts 233
CJEU cases see European Court of Justice (ECJ) as fundamental rights court see constitutionalization of the European legal order, CJEU as fundamental rights court intersections with IP rights and human rights, CJEU approach 71–8
Claudie, D. 637–8
cloning, reproductive 483
Coban, A. 668
Coe, P. 404
Cohen, J. 372, 503
Cohen Jehoram, H. 168–9
Coing, H. 136
collective IP, Latin America 250–52
collective reputations, cultural rights 546–7
Colombia
Columbian-US fair trade agreement 224–5
international IP agreements, constitutional status 242–3
IP strategies 177, 224–5
moral rights as fundamental rights 237–8, 239, 245–6
price control regulations and pharmaceuticals 213–15
commercial exploitation concerns
counterfeiting on commercial scale (US) 193
traditional knowledge 656
competition and cooperative models, freedom to conduct a business 414–15
and corporate personality rights 394–5, 401, 402
effects, bilateral and multilateral legal levels 182
unfair, and trade secrets 430
conflictive relations, bilateral and multilateral legal levels see bilateral and multilateral legal levels
conflictive relations
confusion and dilution, protection against, trademark system 365–6
Conley, J. 531–2
constitutional perspective
courts, Latin America see Latin America, IP decisions of Constitutional Courts
freedom to conduct a business 108–9, 114–16, 410–15
fundamental right to intellectual property 138–9, 141–8
national constitutional courts see European national constitutional courts, IP decisions
support for new constitutional validity, and new social contract 678–85
constitutionalization of the European legal order 103–31
Berne Convention discretion 118
constitutional framework 104–7
constitutional pluralism 105–6
‘fair balance’ between rights of copyright owners and rights of others, lack of 128
fundamental rights, selective references to 126–7
harmonizing effect 106, 118
inflation of fundamental rights, risk of 129–30
lock-in risk 127–8
Index

patentability of stem cell research and destruction of human embryos 126–7
patents and human donor products 107–8
systemic impact and systemic risk 126–30
constitutionalization of the European legal order, CJEU as fundamental rights court 105–26
copyright of author’s own intellectual creation 120–21
data protection, ISP addresses and requirement of ‘fair balance’ of rights 112–14, 122, 124
eexternalizing fundamental rights outside IP law 107–8
freedom of expression v. intellectual property ownership, new restrictions on 110–11, 129
freedom to pursue a trade or profession 108–9, 114–16
high levels of intellectual creation and high level of protection, causal link between 119
injunction issued against ISP to filter content v. freedom to conduct business 114–16
investment rewards 108–9
obligatory regional exhaustion for copyright 110–11
parodies and potentially problematic ‘discriminatory message’ 122–3, 129
rental rights and piracy 108–9
social media platforms 116–17
strategic referrals to fundamental rights (2008–2013) 112–26
website access, blocking 121–2
constitutionalization of the European legal order, EU Charter 104, 105–6
discrimination protection 123
and freedom to conduct a business 115
and freedom to receive and impart information 110
limitation of rights 130
protection of property ownership 106, 115, 118, 119, 120–21, 125
right to effective remedy for violations of rights guaranteed by EU law 129
consumers
confusion risk, trademark system and freedom of expression 369–70
defection avoidance, cultural rights and geographical indications 546, 547
reference consumer approach, OHIM 306–7
trade mark law not consumer protection law 308–10
Cook, T. 494
Coomans, F. 457
Coombe, R. 556, 644
copyright
author’s own intellectual creation 120–21
authors’ rights 91–5
collecting societies, Latin America 248–9
and conflict of interests 226–7
and cultural rights see cultural rights and copyright
digital see digital copyright enforcement measures
and disability see disability, human rights and copyright
harmonious interpretation, intersections with IP rights and human rights 74–6
ISPs and copyright protected works 72
law infringements, exceptions to 134–5
moral dimension 665–6
new social contract for protection of intangibles 678
obligatory regional exhaustion 110–11
protection, European national constitutional courts 229–31
TRIPS Agreement and freedom of expression 168–71
TRIPS and copyright as trade right IP 92–4
copyright, freedom of expression and right to information 331–53
case law 347–9
case law, Ashby Donald see European Court of Human Rights (ECtHR), Ashby Donald v. France
case law, convictions, assessment of 348–9, 352–3
case law, Pirate Bay see European Court of Human Rights (ECtHR), Neij and Sunde Kolmisoppi v. Sweden (Pirate Bay case)
copyright as fundamental right 340–47
EU Charter, copyright as fundamental right 342–7
EU Information Society Directive 341, 343, 344–5, 346, 351
European Convention on Human Rights (ECHR), copyright as fundamental right 341–2
fair use clause, call for 351
future suggestions 350–53
International Covenant on Civil and Political Rights (ICCPR) 338–40
Internet freedom and copyright enforcement 339–40
legal framework 332–47
national copyright legislation, need for mandatory enforcement 351
parody as limitation of copyright 345–6
research and private study promotion 344–5
television broadcasting 343–4
copyright, freedom of expression and right to information, European Convention on Human Rights (ECHR) 332–8
abusive claims and anti-SLAPP sanctions 352
conflicting rights 334–5
exceptions and limitations 333–4
expressing, imparting, receiving and accessing information 336–7, 343, 345, 347–8
freedom of expression, arts and culture 336
freedom of expression and the Internet 337–8, 352
‘notice-and-takedown’ proceedings 352
positive obligations and horizontal effect 335
‘triple test’ 333, 350–51
Cornish, W. 124, 663
corporate personality rights 389–409
brand image 393
competition, possible effects on 394–5, 401, 402
construction of, protection of trade secrets 406
defamatory or derogatory speech, protection against 405, 406–7
derogatory acts affecting reputation 389, 391, 393, 394, 395
free riding 390, 397, 398, 402
integrity right 393
moral right to integrity 391, 392, 393, 394
reputation protection in IP and human rights law 391–4
trade mark tarnishment 391, 392, 393, 400
corporate personality rights, reputation as legal construct 394–403
brand image and trade mark law 401–3, 404
dilution by blurring 399–401, 405
EU Trade Mark Directive 397–8, 399, 400–401
freedom of commercial speech 402–3
identical quality claims 400
neutral treatment and integrity right 394–6
parody 404–5
property rights in reputation 398
reputation beyond tarnishment and blurring 397–401
trade mark law, reputation in 397–403, 404
Correa, Carlos M. 168, 201–16, 429, 430, 497, 501, 528, 536, 563, 565
Cortés Gamba, M. 213–14
Costa Rica
copyright collecting societies 248
international IP agreements, constitutional status 244
Costello, C. 59
Cowen, T. 170
Craig, C. 665
Craig, P. 68, 107
criminal measures
enforcement 186–7, 192, 193–4, 465
EU Criminal Enforcement Directive 186–7
and financial gain 193–4
Croatia, copyright infringement 228
Cross, J. 575
Cullet, P. 150, 178, 236
cultural rights
arts, freedom of 233, 336, 597–8, 687–8
authors see authors
cinematographic work, exploitation rights 76–8
‘cultural heritage grabbing’, trademark system 359
developing countries, cultural life, right of every person to take part in 213
disability, moral rights and access to culture 592–4
disability movement and access to culture 578–84
disability, participation in culture as human right 594–6
performers and performances 229–31, 249
philosophical foundations of IP 93–5
significance, trademark system 358–9, 360–61, 363, 365–6, 370–72
cultural rights and copyright 560–76
Access to Knowledge (A2K) and IP reforms, call for 562, 564, 565, 575
digital technologies 562, 563–5, 566, 573
End User License Agreements (EULAs) 567, 574
exceptions and limitations 566, 572
fulfillment obligation 570–71, 575
human rights framework 567–71
Index 697

human rights and intellectual property, conflict/coexistence debate 563–7
International Covenant on Economic, Social and Cultural Rights (ICESCR) 567–71
moral and material interests of authors and inventors 569
multi-level approach, call for 571–5
respect for cultural life 570, 572–3
technological protection measures (TPMs), legal recognition of 566–7
third party violations, protection from 70 574–5
TRIPS Agreement, database protection 565
TRIPS Agreement, and flexibility for developing countries 563–4
TRIPS Agreement, three-step-test 566, 573
UN Covenant on Economic, Social and Cultural Rights (ICESCR) 560–61, 562 and UNESCO 560, 561–2
Universal Declaration of Human Rights (UDHR) 567–8
WIPO Internet Treaties 564, 565, 566–7, 568
cultural rights and geographical indications 544–59
club goods 546
collective reputations 546–7
consumer deception avoidance 546, 547
cultural heritage accommodation 551–5
cultural rights, controversial nature of 553–5
cultural rights, use of term 551–2
human rights of individual members, possible conflict with 554–5
intangible cultural heritage 555–9
intergenerational transmission 558–9
International Covenant on Civil and Political Rights (ICCPR) 552–3
International Covenant on Economic, Social, and Cultural Rights (ICESCR) 552
international legal instruments 553–4
misleading uses, rights to prevent 546
national identity and invented traditions 548
oral traditions of local products 550, 556
production practices, protection of 549–50
tourism promotions 550
trade mark protection similarities 546
tradition and authenticity 557–8
TRIPS definition 545, 547
UNESCO Universal Declaration on Cultural Diversity 554, 555
Universal Declaration of Human Rights (UDHR) 552
wine appellations, legal regulation of 547–8
Curado, M. 544
cyberattacks, digital copyright enforcement measures 466–7
cybersquatting, ICANN Top Level Domain process 384
Da Silva, D. 556
Dagan, H. 431
Dashwood, A. 62
data protection 72–3, 112–14, 122, 124, 565
Daughberg, M. 554
Davies, G. 395, 675
Davison, M. 372, 572
De Búrca, G. 55, 61, 63, 107
De Carvalho, N. 429, 430
De Feyter, K. 610, 611
De la Mare, T. 29
De Londras, F. 667
De Mello e Souza, A. 506
De Schutter, O. 8, 164–5, 166, 206, 208, 567
De Soto, H. 151
De Vries, S. 669
Deezley, R. 678
Decker, S. 532
Del Lange, R. 326
Del Toro Huerta, M. 250
Denicola, R. 370
Denicolò, V. 415
Denman, D. 670
Dercelaye, E. 565, 671
D’Erme, R. 438
derogatory acts, corporate personality rights 389, 391, 393, 394, 395, 405, 406–7
descriptive use exemption, trademark system 367
Dessemontet, F. 94
developing countries
food rights and price increases 534–5
licensing of low-cost generic drugs 13
multilateral IP and right to development (RTD) 614–15, 618, 619–21
‘orphan crops’ in developing countries 165–6
pharmaceutical products 162–3
TRIPS Agreement, cultural rights and flexibility for developing countries 563–4
and WTO membership 153–4
see also indigenous peoples, IP rules to support self-determination goals;
698  Research handbook on human rights and intellectual property

traditional knowledge and IP, Pacific island states
developing countries, IP impact and implementation of human rights 201–16
cultural life, right of every person to take part in 213
governmental institutions studies 211
health and access to medicines 201–2, 205–7, 208–9, 212, 213
health and the right to food 206–7, 208–9
human rights impact assessments (HRIAs) 208–11
national jurisprudence 211–15
NGOs 210–11
TRIPS Agreement and access to medicines 201–2, 205–6
TRIPS flexibilities 208
TRIPS-plus protections concerns 207, 208, 212
Di Cataldo, V. 367
Di Giantomasso, F. 372
Dietz, A. 392, 665, 666, 677, 678
digital copyright enforcement measures 455–76
anticircumvention protection 465
authors of underlying works and authors of derivative creations 461–2
core minimum approach 460
criminal enforcement of intellectual property rights 465
cyberattacks 466–7
damages awards against file sharers 464
freedom of opinion and expression right 456–8
global digital divide 458
human rights 456–9
intellectual property rights 459–62
intellectual property rights, limitations and exceptions 461
international agreements, history of 463
Internet border control measures 466
just remuneration approach 460
notice-and-takedown procedure 463
online filtering and surveillance measures 464
OSP liability 463–4
progressive realization approach 460
rogue sites and Internet border control measures 466
subpoena procedure 463–4
Trans-Pacific Partnership (TPP) Agreement 462–3
user-generated content and reuse of copyrighted material 458, 461–2
WIPO Copyright Treaty 465
see also technological measures
digital copyright enforcement measures, Anti-Counterfeiting Trade Agreement (ACTA) 462–3, 465, 471–5
international regulatory system, fragmentation of 473
longstanding interests in promoting human rights, ability to undermine 474
multilateral negotiation process, ability to undermine 472–3
strategic inconsistencies 473
trade and economic partnerships emphasis concerns 471–2
digital copyright enforcement measures, graduated response system 465, 467–71
disproportionate penalties 469–70
due process denied to individual users 469
human rights problems 468, 470–71
internet disconnection based on alleged infringements 470
origins and international adoption 467–8
privacy concerns 469
and reasonable alternative access 468–9
speech chilling effects 468
unverified suspicion of infringing activities 469
digital technologies

cultural rights and copyright 562, 563–5, 566, 573
disability, and format access concerns 590–91
Dikov, G. 189
Dinstein, Y. 93
Dinwoodie, G. 372, 373, 566
disability, human rights and copyright 577–602
blind, and access to books 584–6
blind, and access to books, legitimate interests of authors, concerns over 585, 593
cross-border exchange of works in accessible format 588
digital format access concerns 590–91
disability movement and access to culture 578–84
economic impact of cultural activity 596
EU Charter 582, 593
EU Information Society Directive 589
European Convention on Human Rights (ECHR) 582, 593

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
European Disability Strategy 582, 589
International Covenant on Economic, Social and Cultural Rights (ICESCR), right of author to benefit from moral and material interests arising from a work 579, 581–2, 592, 593, 594, 596, 599
legal opportunities to resolve complaints 599–601
national jurisdictions (EU), differences between 589–90
national level initiatives (UK) 582–3
UK Arts Council, Creative Case for Diversity 597–8
UK Copyright (Visually Impaired Persons) Act 589–90
UK Disability Rights Commission 583
UK, Hargreaves Review ‘Digital Opportunity’ 590
UN Convention on the Rights of Persons with Disabilities (CRPD) 8, 62, 580–81, 585–6, 594, 595, 598–9
UN Resolution on Equalization of Opportunities 579–80, 581
WIPO Marrakesh Treaty 587–8, 590, 594, 596–8, 599, 622–3
World Blind Union (WBU) and WIPO negotiations 585–6
disability, human rights and copyright, unresolved issues 591–601
copyright as human right, moral rights and access to culture 592–4
international monitoring 599
participation in culture as a human right 594–6
participation in culture as a human right, actors and dancers 594–5
perpetuating perception of people with disabilities as ‘other’ 596–8
practical enforceability of a rights-based approach 597, 598–601
discrimination protection, EU Charter 123
dispute settlement
balancing paradigm, problems with 135–6
food, right to, and IP protection for plant genetic resources 542–3
ICANN Uniform Domain-Name Dispute-Resolution Policy (UDRP) 383, 385, 386
WTO (World Trade Organization) 154, 160, 176, 212
distinctiveness requirement, trademark system and freedom of expression 369–72
DNA, isolated genomic, and patents 254, 257–9, 262–3
Dogan, S. 372
domain names
European national constitutional courts 231–2
and ICANN see ICANN Top Level Domain process and free speech
see also Internet
Dommering, E. 333
Donders, Y. 553, 560, 561
Donnelly, J. 412
Douglas-Scott, S. 59, 424–5, 670
Douzinas, C. 93
Downs, G. 473
Drahos, P. 93, 180, 413, 606, 614, 615, 630, 631–2, 640
Dranove, D. 417
Drassinower, A. 135
Dreier, Thomas 219–35, 687
Drexl, J. 413, 670
Dreyfuss, R. 3, 8, 236, 354, 362, 494, 566, 663
Du Bois, C. 548
Ducoulombier, Peggy 39–51
due process principle 322–4, 469
Dupré, C. 126
Dusollier, S. 12, 565, 572, 663
Duffield, G. 526, 533, 541, 542, 561, 606
Dworkin, R. 36, 39
E-Commerce Directive, EU 73, 463
ECHR see European Convention on Human Rights (ECHR)
ECJ see European Court of Justice (ECJ)
ECommHR see European Commission of Human Rights (ECommHR)
economic impact
bilateral and multilateral legal levels 182
disability and cultural activity 596
multilateral IP and right to development (RTD) 608, 610
trade secrets and right to property 424
ECHHR see European Court of Human Rights (ECHHR)
Ecuador, collective IP 250
Eeckhout, P. 55
Ellig, J. 412
Elliott, R. 11
distinctiveness requirement, trademark system and freedom of expression 369–72
embryo protection, human dignity and patents 484, 488, 491–2
employment discrimination law 54, 63

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
End User License Agreements (EULAs) 567, 574
enforcement provisions
disability, human rights and copyright 597, 598–601
EU Enforcement Directive 73, 341
powers of international institutions 9–10
preferential trade agreements (PTAs) 185–6, 187–8
EPO see European Patent Office (EPO)
Boards of Appeal
equal negative liberty principle 136, 140, 145
equal treatment and absolute and relative
grounds for refusal, OHIM 292–5, 302–3
equality of arms principle 190–92, 196, 445
equality of human rights 39–51
absolute and non-absolute rights 44, 45–6
admissibility criterion and significant
disadvantage 48–9
Convention and non-Convention rights,
hierarchy between 42–3
deportation 47
derogable and non-derogable rights 44, 45–6, 47
first- and second-generation rights 40
health and medical information 48
hierarchy of Convention rights based on
multiple criteria 44–9
hierarchy of Convention rights based on
multiple criteria, criticism of 49–51
‘no punishment without law’ principle 44, 45
private and family life 48
racial discrimination 47
right to life 44, 45
sexual orientation 48
slavery and servitude, prohibition of 44, 45, 46
socio-economic rights 40–41
substantive and procedural rights 46–8
torture, prohibition of 44, 45, 46, 50
waiver of rights 46–7
Esser, J. 141
EU
Biotechnology Directive 76, 107–8, 126–7, 146, 486–7, 491–2, 530
Community Patent Convention (CPC) 263
Comparative Advertising Directive 374
Council of Europe role, international human
rights law 53–4, 57–60, 67–8
Criminal Enforcement Directive 186–7
Dangerous Preparations Directive 426
Data Retention Directive 113
E-Commerce Directive 73, 463
Enforcement Directive 73, 341, 427–8, 436
freedom of expression right 12
medical testing and research 261–3
Misleading Advertisement Directive 368
Racial Equality Directive 123
Rental and Lending Rights Directive 108
sex discrimination law and employment
standards 63
Software Protection Directive 574
Television Broadcasting Directive 343–4
Trade Mark Directive 397–8, 399, 400–401
trademark law see trademark system and
freedom of expression, EU trademark law
EU Charter
consitutionalization of the European legal
order see constitutionalization of the
European legal order, EU Charter
copyright 341, 342–7
disability, human rights and copyright 582, 593
European national constitutional courts, IP
decisions 220
European Patent Office (EPO) Boards of
Appeal 316–17
EU Convention for the Protection of Human
Rights and Biology (CHRB) 481–2, 483, 484, 487
EU-funded project, traditional knowledge,
Pacific island states 649–50, 655
European Commission of Human Rights
(ECommHR)
A.D. v. the Netherlands 668
Aral, Tekin and Aral v. Turkey 336, 341, 422, 668
Index 701

British-American Tobacco Company Ltd v. The Netherlands 422
Lenzing AG 315, 319, 422, 441, 669
M & Co v. Germany 66
Reber v. Germany 441
Smith Kline and French Laboratories Ltd v. the Netherlands 79, 412, 422, 669, 679
Société nationale de programme France 2 v. France 341

European Convention on Human Rights (ECHR)
copyright and freedom of expression 170
copyright as fundamental right 341–2
copyright protection cancellation review 120
criminal enforcement proceedings 442–4, 447–52
disability, human rights and copyright 582, 593
equality of human rights see equality of human rights
fair trial right 189, 284, 287–8, 440–41
freedom of expression and information see copyright, freedom of expression and right to information, European Convention on Human Rights (ECHR)
freedom of expression right 43, 140, 302, 331, 374, 392
freedom to receive and impart information (Article 10) 110
fundamental right to IP and discretion of legislature 136–7, 140, 141
human dignity and patents 483, 484, 485
international human rights law and the European legal framework, interaction between 58–9, 63, 65–6, 66–7
jurisdiction restrictions 58–9, 65–6, 81–2
legality guarantee 450–52
life, right to 261, 507–8
and national IP laws 7–8
personal honour and reputation right 391–2
privy right 191, 334
property right 78–87, 106, 119–20, 125, 136–7, 667
proportionality principle see proportionality principle and human rights
protection of property ownership 119–20
three-prong test of lawfulness 141, 144
trade secrets and right to property 421–4
and UN Security Council action 58–60
European Court of Human Rights (ECHR)

A v. Norway 392
Airey v. Ireland 40, 41, 446
Akdaş v. Turkey 336
Al-Adasani v. United Kingdom 45, 83
Al-Saadoon v. United Kingdom 44
Alinak v. Turkey 336
Anheuser-Busch v. Portugal 8, 43, 81, 82, 86, 137–8, 221, 297, 341, 422–3, 430–32, 514, 593, 669
Appleby v. United Kingdom 335
Ashby Donald v. France 7, 43, 85–7, 110, 129, 133, 144, 331, 342, 347–9, 452, 601, 668, 682, 688
Ashingdane v. United Kingdom 445
Axel Springer AG v. Germany 43, 334, 336, 350
Bäck v. Finland 21
Balan v. Moldova 8, 80–81, 82, 87, 120, 422, 514, 668
Barber à Messegue and Jabardo v. Spain 448
Becvár and Becvárová v. the Czech Republic 21
Behrami v. France 58, 64
Belgian Linguistic case 21, 23, 25, 35
Beyeler v. Italy 137
Blecic v. Croatia 21
Borgers v. Belgium 189, 445
Bosphorus Airways v. Ireland 59, 61, 144, 440
Brannigan and McBride v. United Kingdom 22
Brasilier v. France 50
British-American Tobacco v. the Netherlands 314, 443
Brogan v. United Kingdom 28
Buscemi v. Italy 443
Camilleri v. Malta 451
Canea Catholic Church v. Greece 25–6
Casado Coca v. Spain 302
Centro Europa 7 S.R.L. and Di Stefano v. Italy 137, 353
Chappell v. United Kingdom 191
Chassagnou and Others v. France 42–3
Chauvy v. France 43, 392
Ciulla v. Italy 25
Colman v. United Kingdom 417
Connolly v. 15 Member States of the European Union 66
Cumpana v. Romania 349, 392
Demir and Baykara v. Turkey 41, 83–4
DH v. Czech Republic 47, 53

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
Research handbook on human rights and intellectual property

Dima v. Romania 80, 120, 137, 341, 422, 445, 668
Enerji Yapı-Yol Sen v. Turkey 41
Eskelinen v. Finland 67
Evans v. United Kingdom 48, 492
Fener Rum Erkek Lisesi Vakfı v. Turkey 138
Fretté v. France 32
Güfven v. Germany 44
Giusti v. Italy 48–9
Golder v. United Kingdom 189, 446
Goodwin and I v. UK 53, 67
Grudic v. Serbia 137
Hachette Filipacchi Associés (“Ici Paris”) v. France 334, 348
Hamer v. Belgium 137
Handyside v. United Kingdom 23–4, 34, 35, 45, 54
Harutyunyan v. Armenia 27
Hatton v. UK 22–3, 24, 67, 144
Iatridis v. Greece 137
Ireland v. The United Kingdom 199
Jallol v. Germany 27
James v. United Kingdom 21–2, 188
Jersild v. Denmark 42, 336
Kafkaris v. Cyprus 451, 453
Karako v. Hungary 392
Karatas v. Turkey 336
Kasymakhunov and Saybatalov v. Russia 451
Khamidov v. Russia 446
Khurshid Mustafa and Tarzibachi v. Sweden 335
Kokkinakis v. Greece 45, 193
Kononov v. Latvia 45
Kopecký v. Slovakia 137
Lillo-Stenberg and Sæther v. Norway 349
Lindon v. France 43, 392
Lobanov v. Russia 137
Malik v. United Kingdom 137
Marcz v. Belgium 136
Matthews v. United Kingdom 59, 66
Maurice v. France 120
M.C. v. Bulgaria 27
Mellacher v. Austria 21, 24
Melnychuk v. Ukraine 341, 668
Moldovan v. Romania 27, 47
M.S. v. Belgium 47
N. v. the United Kingdom 41
Nemec v. Slovakia 189
Niemetz v. Germany 425
Nikowitz and Verlagsgruppe News v. Austria 349, 392
Olsson v. Sweden (no.1) 191
Öneryildiz v. Turkey 137
Open Door and Dublin Well Woman v. Ireland 67
Paefgen v. Germany 138, 668
Petrina v. Romania 392
Pfeifer v. Austria 392
Potomka and Potomski v. Poland 679
Powell and Rayner v. United Kingdom 23
Radio France v. France 43, 392
Riener v. Bulgaria 24
Saadi v. Italy 44
Saadi v. United Kingdom 45
Sadak v. Turkey 26
Saghinadze and Others v. Georgia 137
Saramati v. France, Germany and Norway 58, 64
Schalk and Kopf v. Austria 56, 67
Schuessel v. Austria 392
Schüler-Zgraggen v. Switzerland 442
Scoppola v. Italy 57, 451
SEGI v. 15 States of the European Union 66–7
Siliadin v. France 45
Smith and Grady v. United Kingdom 31–2
Steel and Morris v. United Kingdom 446
Stretletz, Kessler and Krenz v. Germany 45
Sunday Times v. United Kingdom 24, 45
S.W. v. United Kingdom 45, 451
TASZ v. Hungary 337
Times Newspapers Ltd v. United Kingdom 337
Timpul Info-Magazin and Anghel v. Moldova 337
Van Kück v. Germany 446
Vereinigung Bildender Künstler v. Austria 336, 392
Vinter and Other v. United Kingdom 453
Vö v. France 492
Von Hannover v. Germany (No. 2) 43, 135, 334
Węgrzynowski and Smolczewski v. Poland 337, 338
White v. Sweden 392
X. and Y. v. the Netherlands 27, 142
Yıldırım v. Turkey 337–8
Youth Initiative for Human Rights v. Serbia 337
Z. and Others v. United Kingdom 27
Zolotukhin v. Russia 45
European Court of Justice (ECJ)

ABNA Ltd. v. Health and Food Standards
   Agency 112
Adidas v. Fitnessworld 365
Adidas v. Marcas 367, 371
Agencja Wydawniczta Technopol v. OHIM 293, 300
Åkerberg Fransson 106, 274
Alber v. OHIM 280
Alessandrini v. Commission 112
Alphen 278, 288, 296, 297
Apetito 283
Arcol 284, 285, 288
Arsenal v. Reed 363
Audi v. OHIM 360
Bang & Olufsen v. OHIM 288, 297, 301, 370
Be Light 293
Belgische Vereniging van Auteurs v. Netlog 344, 351
Benetton v. G-Star 361
Bild digital 292
Bioderma 280
Biomild 360
Biopatents 107–8
Biret v. 15 States 68
BMV v. Deenik 364
Bonnier Audio 113–14, 124, 134, 439, 681
Booster Aquaculture v. The Scottish Ministers 111
Briestle 126–7, 146, 487, 492, 494, 600
Budweiser 81, 279
Calpico 285
Calvin E. Williams 292
Canon v. Cannon 365
Carbon Capital Markets 305
Céline 364
Celtich 280
Centrotherm 294
CFCMCCE v. OHIM 299
Cheimsee 300, 305, 357, 360
Chufa^j# 305
Conforflex 305
Corpo livre 294
Costa v. ENEL 54
Danfja v. OHIM 365
Davidoff v. Gofkid 366
Decknyn 122–3, 126, 345–6, 350, 351, 353, 434
Deutsches Weintor 127
Di Lenardo Adriano Srl v. Ministero del Commercio con l-Estero 111–12
Digital Rights Ireland 105
Dior 74, 75
Divinus 279
DR and TV2 Danmark A/S v. Nordisk
   Copyright Bureau 126
Echinald 305, 306
Epetec 282
Europolis 360
FICKEN 303
Fishbone 279
Fiskano 441
Flaco 283
Flos 143
FLT-I 304
Football Association Premier League v. QC
   Leisure 138, 145, 413
Formula One Licensing v. OHIM 307
Fraas v. OHIM 444
Francovich and Bonifaci v. Italy 68
Friuli-Venezia Giulia and ERSA 111, 112
Gaal 286
Gazi Helli 282
General Motors v. Yplon 366
Geraldehyde Brunnen v. Putsch 367
Good life 283
Google v. Louis Vuitton 363, 364
Grana Padano 557
Green by missako 307
Greenpeace Nederland and PAN Europe 337
Grogan v. SPUC 67
Guitar 278
Heidelberger Bauchemie 299
Hoescht v. EC Commission 425
Infopaq 118, 145, 402, 434, 671
Insulate for Life 291
Intel v. CPM 366
Interflora v. Marks & Spencer 368, 374, 671–2
Internationale Handelsgesellschaft  v. Einfuhrg 57
IP Translator 299, 307
Isdin v. Bial-Portela 279, 299
Kadi and Al Barakaat v. Council 60–61, 62
Kik 282
Kiss Device 278
Knauf Gips v. Commission 129
Križan and others 144, 147
KWS Saat v. OHIM 278
Lancôme v. OHIM 360
Laserdisk 110, 343
Lego 305, 361, 371
Lifecycle 278
Lindt v. Hauswirth 359

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
Research handbook on human rights and intellectual property

Lisrestal 441
Litel 309
Lloyd v. Loint’s 365
L’Oréal v. Bellure 366, 368, 373, 374, 375, 390, 393, 397, 398–400, 402–3, 404, 407, 671–2
L’Oréal v. eBay 364
Luksan 76–7, 117, 120, 125, 131, 134, 681
Maxigesic 306
Melloni v. Ministerio Fiscal 105, 131
Memory 289, 305, 306
Merck Genéricos 74–5
Metabol 308
Metronome Music 108–9, 140, 144
Microsoft 408
Monsanto v. Cefetra 76
Mozart 280, 307
MY Drap 307
Netherlands v. Parliament 107, 490, 491, 601
Netto Marken Discount 307
New Yorker Jeans v. OHIM 294
Nicorono 307
Nold v. Commission 57
O Store 308
O-live 307
O2 v. Hutchison 364, 368, 374
OHIM v. Frosch Touristik 277
Opel v. Autec 364
Orkem v. Commission 442
Padawan 227
Pago v. Lattella 366
Painer 128, 145, 343, 351, 680
Peek & Cloppenburg 112, 145, 309
Pharmastreet 307
Philips v. Remington 361, 371
Picasso v. Picaro 365
Praktiker 307
Procter & Gamble v. OHIM 287
Promusicae 72–3, 75, 76, 112–13, 114, 124, 133, 135, 147, 344, 439, 454, 593, 681
Protactive 294
R10 295
Raffinerie Mediterranee and others 144
‘Rauscher’ Consumer Products v. OHIM 293
Reber v. OHIM 367
Roca 278
Roguerre Frères 425
Scarlet Extended v. SABAM 73–4, 114–16, 123–5, 133, 134, 142, 158, 344, 351, 419, 432, 439, 464, 680, 681
Servicepoint 307
SGAE v. Rafael Hoteles SA 112, 671
Shield Mark v. Kist 358
Sieckmann v. Deutsches Patent 299
Sky Österreich 129, 135, 137, 410–11, 419, 601, 680
Svensson, Sjögren, Sahlin, Gadd v. Retriever Sverige 351
Swedish Match 419
Swift GTI 305
Technische Universität Darmstadt 337, 350, 351–2
Technische Universität München 295
Tecnimed v. OHIM 446–7
Test-Achats 105
Tietosuojavaltuutettu v. Satakunnan Markkinapörss 344
Timi Kinderjoghurt v. Satakunnan Markkinapörss 344
Van Gend en Loos 54
Vogue 307–8
Volker and Schecke 105
XXXLutz Marken GmbH v. OHIM 444
see also CJEU

European courts, human rights and IP rights’ intersections see intersections with IP rights and human rights, European courts addressing
European Disability Strategy 582, 589
European legal framework and international human rights law see international human rights law and the European legal framework, interaction between
European legal order, constitutionalization of see constitutionalization of the European legal order
European national constitutional courts, IP competencies overview 221–2

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
copyright and conflict of interests 226–7
copyright infringement 228
copyright protection 229–31
court judgments, control of 235
domain names 231–2
EU Charter 220
European Convention on Human Rights (ECHR) 220–21
exclusivity considerations 230
German example 228–34
guarantee language, variations in 220
judicial review 233–4
legislative and court discretion 234–5
music and technical protection measure 233
neighbouring rights 230
patent law 225–6, 231–2
patents and guarantee of property 232
patents and supranational acts 232
performances by performing artists 229–31
private copying, remuneration claims 227, 229, 230, 233, 234
property guarantee 229, 230, 231, 232, 235
property interests of IP owners, rights opposing 232–3
protection of interests of IP owners 229–32
trademark law 227, 228, 231–2
European Patent Convention (EPC) 261–3
European Patent Office (EPO) Boards of Appeal 311–26
Disciplinary Board of Appeal 313, 316, 318–20
due process principle 322–4
Enlarged Board of Appeal, WARF 491, 492
enlarged Boards of Appeal 312–13
EPO as international institution 311–12
EU Charter 316–17
European Convention for the Protection of Human Rights (ECHR) 314–15,
319–20, 321, 322
European Patent Convention (EPC) 311–17
exceptions to patentability 320–21
fair trial 323
heard, right to be 323
human rights issues arise 317–20
International Covenant on Civil and Political Rights (ICCPR) 319
judicial impartiality 324
ordre public 320–22

Technical Board of Appeal (TBA), Relaxin 489–90, 491
TRIPS Agreement 315
Universal Declaration of Human Rights (UDHR) 315–16, 322
European Seed Association (ESA) 531
European Social Charter 40, 41
European Trade Mark and Designs Office (OHIM), fundamental rights 273–310
absolute grounds for refusal 276–7, 282, 291, 292–5, 302–3
access rights 281
administration right 274–5, 281
applications 276
clear and precise goods and services 307–8
Community trade marks (CTM) and Registered Community Designs (RCD) 273–4
compensation for decision delays 276
creative effort, lack of 296
descriptive signs and limitation of property 300–301
equal treatment and absolute and relative grounds for refusal 292–5, 302–3
filing and registration 297
impartiality, fairness and timely decisions 275–7
language regime 282–3
non-distinctive trade marks and disclaimers 299–300
obligation of use 298
opposition and cancellation without compensation 297
‘overall examination’ approach 307
procedural rights, importance of 274–83
public and private interests, examination of 296, 298–308
reasoned decisions 279–80
reference consumer approach 306–7
refusal justification by overriding public interests 298–303
refusal, relative grounds for, and protection of public interests 303–8
registration refusals 280
right to be heard 277–9
territoriality limitations 296
trade mark law not consumer protection law 308–10
trade marks as peculiar objects of property 295–8
European Trade Mark and Designs Office (OHIM), fundamental rights, right to

Index 705

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
effective remedy before a tribunal 283–92
allocation criteria 285–8
allocation criteria, doubts over 286
appealing against ‘silence’ 290
binding effect of previous decisions in new cases, lack of 290–91
Boards of Appeal between administration and tribunal 284–5
contested decisions 287–8
decision control, lack of complete 289–90
legal aid, lack of 291–2
legal judge principle 286–7
oral hearings 289
evidence preservation measures 436, 445, 448–50
exclusive rights
fundamental right to IP and discretion of legislature 145, 147–8
trademark system and freedom of expression 362–8
experimental use exception 263–4, 269–70
fair balance test
constitutionalization of the European legal order 112–14, 122, 124, 128
proportionality principle and human rights 21, 23, 24, 32, 33, 35–6
fair trial right 438–54
access rights 445–6
bilateral and multilateral legal levels 180, 188–90
‘equality of arms’ principle 445
European Convention on Human Rights (ECHR) 442–4, 447–52
European Patent Office (EPO) Boards of Appeal 323
evidence and presumption of innocence 445, 448–50
extra-judicial opinions, effects of 443
fundamental guarantee of legality 450–52
good administration rights 443–4
hearing within a reasonable time 442–3, 446–7
implicit guarantees 444–7
independent and impartial tribunal established by law 443
national laws 448
oral hearing right 442
proportionality of sanctions 453–4
public hearing right 442
‘trap purchases’ 445
fair use clause, call for, freedom of expression and right to information 351
Falce, V. 414
Falcon, Linda P. 253–72
FAO see under food, right to, and IP protection for plant genetic resources
Farran, Sue 641–58
Farrell, J. 417
Farrell, M. 64
Feldman, D. 481, 482
Feyen, S. 335
Fhima, I. 366, 372
Fibiger, T. 554
Ficsor, M. 584–5, 594
Fiott, D. 64
Firth, A. 181
Fischer-Lescano, A. 70
Fitzgerald, B. 237
Flynn, S. 216
food, beef imports and human rights law 67–8
food, right to, and IP protection for plant genetic resources 521–43
agricultural innovation protection 525–36
biotechnology patents, effects on innovation and R&D 529–30
conflict resolution 542–3
developing countries and price increases 534–5
EU Biotechnology Directive 530
European Seed Association (ESA) 531
FAO Committee on World Food Security (CFS) 524–5
FAO International Treaty on Plant Genetic Resources for Food and Agriculture 536–40
FAO International Treaty on Plant Genetic Resources for Food and Agriculture, Multilateral System (MLS) of Access and Benefits Sharing (ABS) 537–9
FAO International Treaty on Plant Genetic Resources for Food and Agriculture, Standard Material Transfer Agreement (SMTA) 536, 537–9
‘farmers’ privilege’ 527–8
farmers’ rights 539–40
food security and nutrition 524–5
GENESYS portal 537–8
legal and policy framework 522–5
Millennium Development Goals (MDGs) 524
Nagoya Protocol and farmers’ rights 540
overlap between patents and plant breeder’s rights, possible 534
patent monopolies and price increases 534–5
patentability of plant-related inventions 528–36
patents on native traits and plants 531
plant variety protection 526–8
progressive realization approach 523–4
restrictions on exchange and use of plant genetic resources 524
saving seeds for replanting 527–8
SMART breeding (precision breeding) 531
specific (sui generis) system 527, 534
subject matter exclusions 533–4
TRIPS Agreement see human rights and international IP law, TRIPS Agreement, right to food and patents and plant variety protection
US non-patentable invention categories 531–2
Fordham, M. 29–30
Forman, L. 12, 616, 618
Forsyth, M. 635, 636, 637, 652–3, 656
France
Internet protection and HADOPI 467
saise de contrafaçon 190
Francioni, F. 555
Frankel, Susy 518, 519, 520, 627–40
Franz, V. 566
Franzon, L. 415
free speech, and domain name process see ICANN Top Level Domain process and free speech
freedom of arts and sciences 674–5, 687–8
freedom of expression
bilateral and multilateral legal levels 180
digital copyright enforcement measures 456–8
ECHR see copyright, freedom of expression and right to information, European Convention on Human Rights (ECHR)
EU Charter 110, 374
and intellectual property ownership, new restrictions on 110–11, 129
intersections with IP rights and human rights 87
new social contract for protection of intangibles 676–7, 688
and trademark system see trademark system and freedom of expression, EU trademark law
freedom to conduct a business 410–20
competition and cooperative models 414–15
constitutional perspective 108–9, 114–16, 410–15
derivative patents 418
FRAND (fair, reasonable and non-discriminatory) license 418, 420
hierarchy of interests 417–19
incentive function 413–14
inclusive strategies 414–15
Internet access 134
and IPRs 411–15
IPRs, exploitation of 416–20
patent-hoarding strategies 416
proportionality principle 418–19
societal effects 418
Freese, B. 534
French, S. 578
Fried, B. 89
Friedman, T. 93
Fromer, J. 92
Frowein, J. 34
Frum, D. 578
Fukuda-Parr, S. 613
Fukuyama, F. 481
fundamental right to IP and discretion of legislature 132–48
balancing paradigm 132–5, 140, 145–6, 147
balancing paradigm, flaws of 135–9, 145–6, 147
conflict resolution and balancing paradigm, problems with 135–6
copyright law infringements, exceptions to 134–5
equal negative liberty principle 136, 140, 145
EU Charter 137, 142–3
European Convention on Human Rights (ECHR) 136–7, 140, 141
exclusivity rights, interpretation of 145, 147–8
expansions and limitations, justifying 139–41, 144
fair-balance test 134, 135
German Basic Law 137–8, 140, 142, 143, 146, 147
interferences with existing IP rights 143–8
international level 133–4, 142, 143–4
Internet access 133, 134
judiciary role 144–5
limitations and exceptions, application of 145–6
protection of works and inventions 142, 143
respect for private life 133
right to property and other fundamental
rights, differences between 135–6
right to property as social function 144
fundamental rights
CJEU as fundamental rights court see
costitutionalization of the European
legal order, CJEU as fundamental
rights court
guarantee of legality, fair trial right 450–52
selective references to 126–7
supra-constitutional status, Latin America
237–8

Gaja, G. 68
Galvão, J. 504
Gandalf, N. 417
Gangjee, Dev S. 104, 354, 373, 544–59, 671,
672
Ganzhorn, Marco 219–35
Garnett, K. 395
Gearty, C. 494
Geiger, Christophe 1–5, 12, 72, 103, 106,
130, 132, 133, 135, 145, 158, 179, 181,
192, 295, 298, 331, 343, 354, 368, 426,
431–2, 438, 566, 575, 593, 661–89
Geller, P. 419
Gendreau, Y. 663
genetics
gene patenting 165
genetic engineering, US 265–6
GM food crops and private sector
profitability 167–8
manipulation research, human dignity and
patents 488–9, 493–4
plant, and right to food see food, right to,
and IP protection for plant genetic
resources
see also biotechnology
geographical indications, and cultural rights
see cultural rights and geographical
indications
Gerhardt, D. 362
Germani, V. 529–30
Germany
Basic Law 137–8, 140, 142, 143, 146, 147
Constitutional Court 221–4, 229–34
Constitutional Law 25
Copyright Act 229–31
corporate personality right 405–6
example as European national constitutional
courts 228–34
Fundamental Law property guarantee 229,
230, 231, 232, 235
legal judge principle 286–7
Mozart Community Trade mark 367
Patent Court, ‘Porträtfoto Marlene Dietrich’
361–2, 370
Germany, cases
AnyDVD 146
Apothekenurteil 141
‘Gen-Milch’ 406
Germania III 146, 233
Gies-Adler 146
‘Jahresabschluss’ 405
Kirchenmusik 142
Le Corbusier 145
Lila Postkarte 146, 364–5, 368
Mona Lisa 358–9
Naßauskiesung 138, 144
‘Oskar Lafontaine’ 403
‘School Book’ 683
Schulfunksendung 142
Gerstetter, C. 542–3
Gervais, Daniel 89–97, 133–4, 462, 518, 519,
520, 566, 638, 678
Ghidini, Gustavo 410–20
Giblin, R. 465, 467
Gibson, J. 642, 654
Gill-Pedro, E. 667
Ginsburg, J. 91, 169, 566, 572, 663
Giovanetti, T. 497
global constitutional framework ambiguity
665–72
Gloppen, S. 8–9
Goebel, B. 669
Goller, A. 15
Golvan, C. 654
Gordon, R. 29
Gordon, W. 89, 94
graduated response system, digital
copyright see digital copyright
enforcement measures, graduated
response system
Graff, G. 533
Graham, L. 644
Grazioli, A. 548
Green, M. 461
Greer, S. 20, 21, 42, 130, 667
Griffiths, Jonathan 15, 104, 106, 118–20,
124–5, 134–5, 187, 295, 343, 438–54,
573, 635, 670, 681

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
gripesites, ICANN Top Level Domain process 378, 385–6
Grosse Ruse-Khan, Henning 13, 70–88, 182, 513, 520, 565, 618, 685
Groussot, X. 68, 667, 670
Grover, A. 206
Guernsey, K. 580
Guibault, L. 355, 567, 574
Gulasekaram, P. 362
Gutowski, R. 96
Guy, K. 548
Gyertyánfy, P. 663
Hacker, F. 373, 374
Hadjioannou, M. 551
Hanf, D. 282
Hannum, H. 567
Hansen, S. 560
Hargreaves, I. 351
Harmon, S. 126
Harmonization
  constitutionalization of the European legal order 106, 118
  intersections with IP rights and human rights 74–6
  problems, ICANN Top Level Domain process 381, 383
Harpur, P. 588
Harris, D. 2, 42, 440, 443, 449, 668
Harrison, J. 15, 208, 461
Hart, H. 35–6, 194
Haugen, H. 522
Haveman, R. 193
Health
  developing countries and access to medicines 201–2, 205–7, 208–9, 212, 213
  developing countries and right to food 206–7, 208–9
  generic medicines, seizure in transit 10
  healthcare access and patient rights, US 254, 255–7, 261, 264, 268
  medical information, equality of human rights 48
  medical testing and research, EU 261–3
  neglected diseases, research promotion 14–15
  patented medicines 13, 14
  pharmaceuticals see pharmaceuticals
  tobacco plain packaging see public health and trademarks, tobacco plain packaging law
TRIPS Agreement and access to medicines 161–4
World Health Organization (WHO) 14, 164, 201–2
health rights and patents 496–512
access to medicines 497–9, 502–5
Anti-Counterfeiting Trade Agreement (ACTA) 507–8
emerging issues 510–11
international instruments 496–9
IP, human rights and health, relationship between 496–9
judicial interpretation (South Africa) 505–7
legislative change (India) 499–502
philosophical foundations of IP 96–7
policy change (Brazil) 502–5
privacy and data protection, ‘three strikes’/’graduated response’ procedures 507–8
as special case 507–10
TRIPS Agreement and reverse engineering 500–501
TRIPS Agreement and right to life 500–501, 510–11
TRIPS Agreement shortcomings 498
heard, right to be 277–9, 323
Helm, H. 359
Helpman, E. 152
Hely, P. 594
Hendriks, A. 578
Hermann, R. 177
Hestermeyer, H. 196, 206
Heymann, L. 362
Hillenbrand, C. 404
Hilty, R. 12, 438, 663
Hirschl, R. 127–8
Ho, C. 13
Hobsbawm, E. 548
Høedt-Rasmussen, I. 86
Hoekman, B. 646
Hohfeld, W. 34, 96
Holtz, C. 322–3
Hooper, A. 647
Hopenhayn, H. 419
Hotez, P. 14
Hore, R. 431
Hudson, E. 431
Huffman, K. 650
human dignity and patents 479–95
biomedical rights 486
and biotechnology 481–2, 484–90
controlling patents beyond dignity 493–5
embryo protection 484, 488, 491–2
EU Charter 482–3
EU Convention for the Protection of
Human Rights and Biology (CHRHB) 481–2, 483, 484, 487
European Convention on Human Rights (ECHR) 483, 484, 485
genetic manipulation research 488–9, 493–4
historical foundations of human dignity and
human rights 483–6
human dignity, understanding of 485–6
human rights as ‘last utopia’ 484–5
international law 479–83
judicial oversight, lack of 491
legal rights 486
moral exclusion grounds 489
patent tribunals (EPOs) 488–93
patent tribunals (EPOs), slaughterhouse
observers 492
patent tribunals (EPOs), ‘social access’
argument 491
religious involvement 484–5, 487–8, 493
reproductive cloning 483
UNESCO and Universal Declaration on the
Human Genome and Human Rights
(HGD) 481
Universal Declaration of Human Rights
(UDHR) 485
human rights
copyright sources, using human rights to
reconcile 94–5
digital copyright enforcement measures 456–9
digital copyright enforcement measures,
graudited response system 468, 470–71
European Patent Office (EPO) Boards of
Appeal 317–20
impact assessments (HRIAs), developing
countries 208–11
international and European legal framework
see international human rights law and
the European legal framework,
interaction between
and IP, competing policies see US,
competing policies between IP and
human rights
and IP rights’ intersections see intersections
with IP rights and human rights,
European courts addressing
multilateral IP and right to development
(RTD) 616–17
and proportionality principle see
proportionality principle and human
rights
supranational instruments, new social
contract for protection of intangibles
667–72
human rights and international IP law 149–72
Berne Convention multilateral copyright
treaty 156–7
developing countries, pharmaceutical
products, protection and enforcement
of patents 162–3
developing countries and WTO membership
153–4
evidence-based policy, need for 159
innovation and public access, striking
balance between 158–9
knowledge, non-excludability and
non-rivalry of 155
markets and economic resources 150–54
markets and intellectual property 155–6
multilateral IP law and human rights 156–9
patents and fostering of innovation in
functioning markets 155–6
public policy tool 159
right holders and follow-on inventors and
authors, balancing interests 159
trade, wealth creation and comparative
advantage 152
WTO role 152–4
WTO role, consensus decision-making 153,
154
WTO (World Trade Organization), dispute
settlement system 154, 160, 176, 212
human rights and international IP law, TRIPS
Agreement 160–71
balance between core objectives, emphasis
on 160, 161
compulsory licensing of dependent patents
159
copyright and freedom of expression
168–71
copyright and freedom of expression,
pre-existing materials, access to 170
Doha Declaration on the TRIPS Agreement
and Public Health 161–2, 177
government control of economic rights
168–9
musical borrowing 169–70
right to health and access to medicines
(patents for pharmaceutical products) 161–4
right to health and access to medicines
(patents for pharmaceutical products),
exports and special compulsory
licences (SCLs) 162–3
right to health and access to medicines
(patents for pharmaceutical products),
R&D funding for neglected tropical
diseases 164
WTO (World Trade Organization), dispute
settlement system 154, 160, 176, 212
human rights and international IP law, TRIPS
Agreement, right to food and patents and
plant variety protection 164–8
farmers’ rights, limited protection 167
food price concerns 165
gene patenting 165
GM food cops and private sector
profitability 167–8
local farmer-developed plant varieties
165–6
local seed exchange 166–7
‘orphan crops’ in developing countries
165–6
R&D concerns 165
sui generis system 166
TRIPS-plus standards, pressure to adopt
535–6
human rights and IP, links between 6–15
civil and political rights 15
clinical separation, reasons for maintaining
9–10
coeexistence approach and maximum
standards/ceilings 13–14
and enforcement powers of international
institutions 9–10
enhancement of human rights, IP’s
involvement in 14
flexibility mechanisms in IP law 13
innovation and creativity, recognising
dynamic nature of 12–13
innovation and public access rights,
coexistence between 13–14
monopoly power of IP, effects of 14
normative framework suggestion 11–14
Hunt, L. 480
Hurst, R. 579
Huston, J. 354

ICANN Top Level Domain process and free
speech 377–88
Beijing Communiqué 379, 380–84, 386
bottom-up versus top-down regulation of
domain names 384–7
bottom-up versus top-down regulation of
domain names, bottom-up regulation,
rationale for 386–8
closed generic registries 378, 379, 380, 386
cybersquatting 384
domain string categories requiring enhanced
safeguards 382
expansion plans 377–8
freedom of speech 381, 386
future potential applicants, deterring 383
generic, definition of 380–81
Government Advisory Committee (GAC)
role 378–9
gripesites 378, 385–6
harmonization problems 381, 383
objections to granting particular character
strings 378
online speech in domain space, imposing
burdens on 385–6
regulators, limited role for 382–3
security checks and monitoring costs 383
terminology concerns 380–81
trademark holders, protection of 385–6, 388
Uniform Domain-Name Dispute-Resolution
Policy (UDRP) 383, 385, 386
Uniform Rapid Suspension System (URS)
384, 386
ICCPR see International Covenant on Civil
and Political Rights (ICCPR)
ICESCR see International Covenant on
Economic, Social, and Cultural Rights
(ICESCR)
Idris, K. 614
India
Constitution and right to life 499–501
Hoffmann-La Roche Ltd. And Anr. v. Cipla
Ltd 211–12
legislative change (India), health rights and
patents 499–502
Mukti Morcha v. Union of India 499–500
Patents Act 500, 501–2
Protection of Plant Varieties and Farmers’
Rights Act 508–9
TRIPS Agreement compliance 500–501,
509
UPOV membership 509–10
indigenous peoples, IP rules to support
self-determination goals 627–40
IP of indigenous peoples 628–31
land claims, importance of 634
legal pluralism, need for 635
New Zealand Māori community and
Waitangi Tribunal 630, 632–4, 635–7
objections 638–9
ownership considerations 636
patent applications 636–7
realisation paths 633–7
right to maintain, control, protect and
develop cultural heritage 631–7
scope of rights 631–3
traditional knowledge assets and IP;
differences between 629–30
traditional knowledge and copyright
protection 630
traditional knowledge definition 632–3
TRIPS Agreement, overlap with Convention
on Biological Diversity (CBD) 638–9
UN Convention on Biological Diversity
(CBD) 638–9
United Nations Declaration on the Rights of
Indigenous Peoples (UNDRIP) 627–8,
633, 638
WIPO and traditional knowledge protection
628–9, 632
see also developing countries; traditional
knowledge and intellectual property,
Pacific island states
innovation
agricultural innovation protection 525–36
biotechnology patents, effects of 529–30
and creativity, recognising dynamic nature
of 12–13
and level of protection, causal link between
119
patents and fostering of innovation in
functioning markets 155–6
and public access rights 13–14, 158–9
intangibles
intellectual property see IP (intellectual
property)
Inter-American Court of Human Rights, Sumo
Community v. Nicaragua 137
International Convention for the Protection
of New Varieties of Plants (UPOV)
207, 243, 509–10, 525–8
International Covenant on Civil and Political
Rights (ICCPR)
cultural rights 552–3
European Patent Office (EPO) Boards of
Appeal 319
freedom of expression 170, 338–40, 456–7
remedies to enforce legal entitlements
184–5
International Covenant on Economic, Social,
and Cultural Rights (ICESCR) 93, 160
copyright 567–71
disability, human rights and copyright 579,
581–2, 592, 593, 594, 596, 599
exclusive rights 239
geographical indications 552
intersections with IP rights and human
rights, European courts addressing 85
new social contract for protection of
intangibles 672–3, 674, 684, 686,
687–8
property protection of works and inventions
142, 157, 459–60, 461
right of every person to take part in the
cultural life 213
right to food 522–4
right to health 161, 498–9
international crises effects, multilateral IP and
right to development (RTD) 612
international development agendas, traditional
knowledge and IP, Pacific island states
645–8
international human rights law and the
European legal framework, interaction
between 52–69
beef imports 67–8
conflicts, consistencies and
complementarities between European
courts 65–8
Council of Europe role 53–4, 57–60, 67–8
Durban Review Conference boycott 64–5
ECtHR jurisdiction restrictions 58–9, 65–6
employment discrimination law 54
EU Charter, impact of 55–6, 67
EU Common Foreign and Security Policy
63–4
EU implementation of international law
57–62
EU sex discrimination law and employment
standards 63
European Convention on Human Rights
(ECHR), EU accession pending 63,
66–7

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
European Court of Justice (ECJ) approach 60–62
European standards 53–6
Human Rights Council, EU role in 65 impact of 53
interaction opportunities 57–68
international human rights entities considering EU law 62–5
peacekeeping and responsibility to protect 64
pregnancy termination provisions 67
religion, defamation of 64
same-sex marriage 56
State discretion, limiting scope of 54
trading and development partners 54–5
UN Convention on the Rights of Persons with Disabilities 62
UN Security Council involvement 58–60, 61
international institutions
digital copyright enforcement measures 463, 473
enforcement powers 9–10
health rights and patents 496–9
monitoring, and right to development (RTD) 609
international law
cultural rights and geographical indications 553–4
fundamental right to IP and discretion of legislature 133–4, 142, 143–4
human dignity and patents 479–83
and human rights see human rights and international IP law
International Law Commission (ILC), human rights obligations 199–200
Internet
access and freedom to conduct a business 134
border control measures 466
digital copyright enforcement measures 463–4, 466, 470
domain names, European national constitutional courts 231–2
domain names, ICANN see ICANN Top Level Domain process and free speech
freedom of expression 337–8, 339–40, 344–5, 352
fundamental right to IP and discretion of legislature 133, 134
ISP addresses, data protection, and requirement of 'fair balance' of rights 112–14, 122, 124
ISP filter system 73–4, 114–16
ISPs and copyright protected works 72
see also technological measures
intersections with IP rights and human rights,
European courts addressing 70–88
cinematographic work, exploitation rights 76–8
CJEU approach 71–8
conflict resolution 75–8, 82–7
ECtHR and right to property 78–87
EU Charter 72–4, 75, 76–8
European Commission on Human Rights (ECommHR), patent rights 79
external international norms as common ground 83–5
fashion show photographs 85–6
freedom of expression 87
government interference justification 79–80
harmonious interpretation 74–6
internalisation via interpretation 75–6
International Covenant on Economic, Social and Cultural Rights (ICESCR) 85
ISP filtering system and IP enforcement measures 73–4
ISPs and copyright protected works 72
national law primacy 82–4, 87
patent rights 79
personal data, obligation to communicate 72–3
right to private life 87
State symbols and documents and copyright protection 80–81
tobacco packaging 84–5
trade union formation 83–4
trademark registration as possession 81–3
TRIPS enforcement regulations, interpretation of 72, 75–6
Vienna Convention on the Law of Treaties (VCLT) 76, 83, 84
IP (intellectual property)
constitutional court decisions, Latin America see Latin America, IP decisions of Constitutional Courts
digital copyright enforcement measures 459–62
enforcement see bilateral and multilateral legal levels, substantive and operational aspects, intellectual property enforcement and human rights
freedom to conduct a business 411–20
and human rights, competing policies see US, competing policies between IP and human rights

Index 713
and human rights’ intersections see
intersections with IP rights and human
rights, European courts addressing
and human rights, links between see human
rights and IP, links between
international law and human rights see
human rights and international IP law
multilateral see multilateral IP and right to
development (RTD)
national court decisions see European
court constitutional courts, IP
decisions
new social contract for protection of
intangibles 662–4
non-economic values 3–4
philosophical foundations of see
philosophical foundations of IP
plant genetic resources protection see food,
right to, and IP protection for plant
genetic resources
self-determination goals see indigenous
peoples, IP rules to support
self-determination goals
and traditional knowledge see traditional
knowledge and IP, Pacific island states
WIPO see WIPO (World Intellectual
Property Organization)
ISPs see under Internet
Jääskinen, N. 124
Jackson, J. 176
Janis, M. 372
Jarass, H. 286
Jasanoff, S. 487
Jenkins, H. 458, 517
Jennings, R. 195
Joint, N. 594
Jokuti, A. 544
Jolly, M. 650
Jomé, T. S. 178
Jorde, T. 413
Jowell, J. 20
Jowitt, A. 651
judiciary role
extra-judicial opinions, effects on fair trial
right 443
fundamental right to IP and discretion of
legislature 144–5
impartiality, European Patent Office (EPO)
Boards of Appeal 324
interpretation of health rights and patents
(South Africa) 505–7
judicial oversight, lack of, human dignity
and patents 491
judicial review, European national
consitutional courts 233–4
new social contract and interpretation of IP
clauses 680–84
proportionality principle and human rights
21–3
Jungcurn, S. 527, 528, 539
Kalbfus, B. 181
Kalinoe, L. 648, 653, 654
Kallay, D. 417
Kampf, R. 164
Kannan, R. 587
Kapczynski, A. 562
Karavas, V. 392
Keeling, D. 112
Kenya, AIDS Law Project v. Attorney General
213, 215
Keohane, R. 599
Kiddell-Monroe, R. 14
Kimbrell, G. 534
Kirsten, J. 546
Klein, E. 25
Klinkert, F. 359
Koelman, K. 398
Kohler, P. 431
Konate, S. 561
Kono, T. 555
Koops, J. 64, 65
Korff, D. 15, 179
Kozinski, A. 363
Kraft, A. 405
Krauss, J. 257, 262, 268
Kremer, F. 464
Kress, C. 192
Krueger, A. 473
Kruk, P. 635
Kühling, J. 105
Kumar, U. 510
Kupczok, Agnieszka 311–26
Kur, A. 13, 78, 372, 373, 375, 671–2, 687
Kwall, R. 96
La Rue, F. 15, 456, 457, 458, 466, 468, 470
Laatikainen, K. 64
Ladas, S. 429
Ladd, D. 169
Laddie, M. 663
Land, M. 456, 457, 461
Landes, W. 413, 546
Lange, D. 355
language
guarantee language, variations in, European national constitutional courts 220
regime, European Trade Mark and Designs Office (OHIM) 282–3
terminology concerns, ICANN Top Level Domain process 380–81
WIPO and shared language concerns 615 see also ambiguity
Lanier, J. 171
Länsineva, P. 125
Latin America, IP decisions of Constitutional Courts 236–52
collective IP 250–52
Constitutional block (enlarged Bill of Rights) 238
Constitutional protection 236–41
Constitutional requirements and limitations for IP rights 244–5
copyright collecting societies 248–9
freedom of the market exception 240–41
fundamentalist approach and supra-Constitutional status 237–8
health and life as priorities 246–8
human rights and domestic effect of international instruments 237
international IP agreements, Constitutional status 242–4
IP rights yielding to other Constitutional interests 245–8
IP status among Constitutional rights 241–2
moral rights as fundamental rights 237–8, 239, 245–6
originality requirement 245
patent or author’s right limitations 245
peculiarities 241–9
producers and performers and IP rights holders, relations among 249
subjective empowerment standard 239–40
trademark law and creation of fame 251
trademark rights 241
traditional knowledge, protection of 251–2
Latvia, ‘Blank Tape Levy’ judgment 683–4
Lauber-Rönsberg, A. 355
Leaffer, M. 473
Lecoent, A. 550
Leczyskiewicz, D. 113
Ledford, H. 533
legal issues

complaint resolution, disability, human rights and copyright 599–601
copyright, freedom of expression and right to information 332–47
cultural rights and geographical indications 553–4
European legal order, constitutionalization of see constitutionalization of the European legal order
human dignity and patents 486
human rights law see international human rights law and the European legal framework, interaction between law and politics, balancing interests of 36–7
legal aid, lack of, European Trade Mark and Designs Office (OHIM) 291–2
legal judge principle, European Trade Mark and Designs Office (OHIM) 286–7
legal pluralism, need for, indigenous peoples and self-determination goals 635
legality principle, bilateral and multilateral legal levels 192–3
legislative change (India), health rights and patents 499–502
legislative discretion see fundamental right to IP and discretion of legislature
Lemley, M. 181, 366, 372, 419, 431
Lesser, W. 527
Lettsas, G. 129
Leval, P. 354, 672
Ley, C. 474
Lewis, T. 412
right to
TRIPS Agreement 500–501, 510–11
US interpretation of 261
Lindsay, D. 386
Lipton, Jacqueline D. 377–88
Lithuania, Constitutional Court and IP 228
Litman, J. 355, 362–3
Lixinski, L. 558
Ljungman, S. 169
Llewelyn, D. 124
Lock, T. 669
Locke, J. 89, 94, 95, 96
Logan, W. 554
Loughlan, P. 372
Love, J. 504
Lucchi, N. 573–4
Lybeck, K. 503
Macaj, G. 64, 65
McCarthy, J. 366
716 Research handbook on human rights and intellectual property

McCarthy, K. 384
McCruden, C. 479, 485
McDonagh, L. 106, 120, 295, 343, 670
McDonald, D. 651
McDonald, S. 675
McDonough, J. 416
Mace, A. 419
McGeveran, W. 354, 373
Machup, F. 240
McKenna, M. 366, 370, 371, 372
MacKinnon, C. 178–9
MacPherson, A. 550
McSherry, C. 466
Madison, M. 545
Malavota, L. 240
Mancini, F. 62
Marchenay, P. 550, 558
Marguénaud, J.-P. 46
markets
and economic resources 150–54
and IP 155–6
Marks, S. 608, 625
Marzetti, M. 213
Maskus, K. 155
Matthews, Duncan 496–512, 605, 664
Matthews, M. 497
Matulionyte, R. 181
May, C. 615
Mayer, F. 106
Mazziotto, G. 350, 567
Meale, D. 671, 680
medicines see under health
Meienberg, F. 529, 531
MElamed, A. 109
Mendoza, R. 154
Mercer, G. 582
Merges, R. 95, 355, 496
Mexico
freedom to exercise a trade or profession 240–41
IP rights not monopolies 242
patents, subjective empowerment standards 239–40
Meyer-Bisch, P. 561
Meyer-Ladewig, J. 136, 138
Michailikis, D. 597
Middlemiss, S. 366
Millard, F. 483, 484
Millennium Development Goals (MDGs) 524,
609, 611, 617, 620, 622
Milly, T. 670, 673
Minssen, T. 532–3
Mintz, S. 548
Mitchell, A. 85, 518
Money, K. 404
monitoring
international, right to development (RTD) 609
security checks and monitoring costs,
ICANN Top Level Domain process 383
Moore, A. 94
moral rights
disability and access to culture 592–4
as fundamental right, Latin America 237–8,
239, 245–6
and material interests of authors and
inventors 569
moral exclusion grounds, human dignity
and patents 489
new social contract and copyright, moral
dimension of 665–6
scientific, literary or artistic production
183–4
Morales Antoniazi, A. 237, 238
Morsink, J. 462, 484, 485
Mößlang, G. 286
Moulds, R. 651
Moyn, S. 484–5
Mtima, L. 675
Mugabe, J. 641
Müller-Terpitz, R. 126
multilateral IP and right to development
(RTD) 605–26
African Charter on Human and Peoples’
Rights 610–11
conflict/coexistence dynamic between IPRs
and RTD 613–16
developing countries’ concerns 614–15,
618, 619–21
development-oriented approach suggestion
614–15
economic, national involvement 610
economic, social and cultural rights
emphasis 608
future advancement potential 625
human right bodies and mechanisms,
invocation of 616–17
implementation problems 610–11
international consensus, growing 608–9
international crises and continuing relevance 612
international monitoring 609
IP rights 613–16
Millennium Development Goals (MDGs)  609, 611, 617, 620, 622
New International Economic Order (NIEO), concerns over 608
regional involvement 609–10
'step-by-step' approach suggestion 611–12
Sustainable Development Solutions Network (SDSN) report 612
TRIPS Agreement 617–19, 626
TRIPS Agreement, Doha Development Agenda 617–18, 620
UN Declaration on the Right to Development 606–8
UN High-Level Task Force (HLTF)  610–11, 613, 617, 622–3
US opposition to 608, 611–12, 616–17, 625
Vienna Declaration and Programme of Action 609
WIPO Development Agenda (DA) 619–26
WIPO Marrakesh Treaty and disability rights 622–3
WIPO and shared language concerns 615
multilateral legal levels see bilateral and multilateral legal levels, substantive and operational aspects
multilateral negotiation process, ability to undermine, digital copyright enforcement measures 472–3
Munoz-Tellez, V. 510
Munzer, S. 557
Murphy, C. 55, 56
Murphy, K. 378, 380
Murray, W. 651
musical works and IP 169–70, 233
Musso, A. 415
Mutua, M. 11
Mylly, Tuomas 1, 103–31
Nagoya Protocol and farmers’ rights 540
Nasser, M. 354, 672
national level
constitutional courts see European national constitutional courts, IP decisions
constitutions, new social contract for protection of intangibles 665–7, 674–7
copyright legislation, need for mandatory enforcement 351
fair trial right 448
identity and invented traditions, cultural rights and geographical indications 548
initiatives, disability, human rights and copyright (UK) 582–3
intersections with IP rights and human rights, European courts addressing 82–4, 87
involvement, multilateral IP and right to development (RTD) 610
jurisdictions, differences between (EU), disability, human rights and copyright 589–90
jurisprudence, developing countries, IP impact and implementation of human rights 211–15
Nérisson, S. 12
Netanel, N. 474, 566, 663
Netherlands ‘Burberrys I’ 370–71
Kecofa v. Lancôme 398
Nadia Plesner v. Louis Vuitton 371–2
New, W. 586
New New International Economic Order (NIEO), concerns over 608
new social contract for protection of intangibles, working towards 661–89
‘absolutist’ logic and EU case law 671–2
abusive use of rights, dangers of 664, 671–2
American Convention on Human Rights (ACHR) 668
American Declaration of the Rights and Duties of Man 667–8, 672
autonomy v. ownership 675–6
constitutional IP protection, overall framework 678–80
copyright, constitutional beginnings 678
copyright, moral dimension of 665–6
EU Charter 669–71, 678–80, 681, 686, 687–8
EU Information Society Directive 677
European Convention on Human Rights (ECHR), IP protection 668–9, 679–80, 681
freedom of arts and sciences 674–5, 687–8
freedom of expression 676–7, 688
global constitutional framework ambiguity 665–72
International Covenant on Economic, Social and Cultural Rights (ICESCR) 672–3, 674, 684, 686, 687–8
IP system and broken social contract 662–4
judicial interpretation of IP clauses 680–84
multiplication of IP rights 663–4
national constitutions, IP provisions in 665–7, 674–7
property guaranty as commonplace 666–7
proposed models of a balanced constitutional IP construction 685–9
protection beneficiaries 663
'quasi-constitutional' patterns of balanced IP protection 677–8
right to property 686
specific and balanced IP provision as better option 672–8
support for new constitutional validity, finding 678–85
supranational human rights instruments 667–72
Universal Declaration of Human Rights (UDHR) 672, 673, 674, 686, 687–8
universal patterns of balanced IP protection 672–3
US Constitution and public-interest considerations 674–5
WIPO Copyright Treaty 677–8
New Zealand, Māori and Waitangi Tribunal 630, 632–4, 635–7
NGOs, developing countries 210–11
niche reputation, trademark system 366–7, 368, 373
Njinken, D. 646
Noel, W. 585
Nogueira Alcalá, A. 238
Nordeide, R. 84
Nordemann, W. 359
Norris, P. 458
Northcote, J. 545
notice-and-takedown procedure, copyright 463, 532
Nussbaum, M. 458
Ó Fathaigh, R. 334
OHIM, see European Trade Mark and Designs Office (OHIM), fundamental rights
Ohly, A. 359, 374, 400, 402, 431
Okediji, R. 96, 473, 563, 566, 574, 606
Oliver, M. 578, 597
Oloka-onyango, J. 153
Olwan, R. 606
Opsahl, T. 19
Orakhelashvili, A. 197
oral hearings 289, 442
Orange, C. 633
Orchard, L. 408
O’Reilly, A. 579
O’Rouke, M. 260
Otero, J. 676
Otten, A. 175
Ovey, C. 83
Pacific island states, traditional knowledge see traditional knowledge and IP, Pacific island states
Parance, B. 238
parody 122–3, 129, 345–6, 404–5
Parry, B. 547–8
patents
Appeal Boards, EPO see European Patent Office (EPO) Boards of Appeal
applications, indigenous peoples and self-determination goals 636–7
author’s right limitations, Latin America 245
compulsory licensing of dependent 159 derivative 418
EU Community Patent Convention (CPC) 263
European national constitutional courts, IP decisions 225–6, 231–2
and guarantee of property 232
and health rights see health rights and patents
and human dignity see human dignity and patents
human donor products 107–8
and innovation 155–6
patent-hoarding strategies 416
philosophical foundations of IP 95–7
plant-related inventions 528–36
rights, and intersections with IP rights and human rights 79
stem cell research and destruction of human embryos 126–7
and US competing policies see US, competing policies between IP and human rights, patents
Patry, W. 469
Pauwelyn, J. 197
Pech, L. 68, 670
Peers, S. 55, 439, 670
Penrose, E. 240
Peralta, P. 556
performers and performances 229–31, 249 see also cultural rights
Peru, health and life as priorities 246–7
Pesses, E. 419
Peukert, Alexander 3, 132–48, 355, 356, 415, 664, 671
pharmaceuticals
private copying, remuneration claims 227, 229, 230, 233, 234

'private financial gain' and criminal measures 193–4

procedural rights, importance of, European Trade Mark and Designs Office (OHIM) 274–83

production practices, protection of 549–50

progressive realization approach 460, 523–4

property claims and patents, philosophical foundations of IP 96

property guarantee 229, 230, 231, 232, 235, 666–7

property right

new social contract for protection of intangibles 686

and trade secrets see trade secrets and right to property

proportionality principle

freedom to conduct a business 418–19

sanctions and fair trial right 453–4

trade secrets and right to property 432

proportionality principle and human rights 19–37

Contracting Parties' privilege, recognition of 34–5

effectiveness measurement 28–9

due process and protection of 25–7, 33

fair balance test 21, 23, 24, 32, 33, 35–6

information standard and level 29–32

interpretation of 19

inverse relationship between facts and norms 30–31

judicial practice 21–3

law and politics, balancing interests of 36–7

least onerous means-test 24–5

least onerous means-test, alternatives, availability of 24–5

least onerous means-test, rejection, reasons for 23–4

limitations 33–5

self-restraint, exercise of 24

strict necessity principle 21, 22–3, 24

suitability of measures 28–33

theory 20–21

Psychogiopoulou, E. 181

public health and trademarks, tobacco plain packaging law 513–20

challenges to 514–16, 517–20

European courts 84–5

plaintiffs' intellectual property lost 516–17

TRIPS Agreement violation claims 517–18

see also health
720  *Research handbook on human rights and intellectual property*

Purday, J. 575  
Quaedvlieg, A. 366

racial discrimination, equality of human rights 47  
Racial Equality Directive, EU 123  
Radin, M. 89, 95  
Ragavan, S. 500  
Ramsey, L. 354, 363, 369, 370, 376, 672  
Ranger, T. 548  
Rangnekar, D. 546, 550  
Raustiala, K. 431, 473, 557, 569  
Razzaque, J. 645, 653, 654, 655  
Reestman, J.-H. 106  
Reich, N. 419  
Reichman, J. 561  
Reid, J. 561–2  
Reina Garcia, O. 238  
Reiss, J. 423, 669  
religious involvement 84, 484–5, 487–8, 493  
Remiche, B. 662  
Rengeling, H. 286  
reproductive rights and piracy 108–9  
reputation, as legal construct see corporate personality rights, reputation as legal construct  
research and private study promotion 346–7  
reverse engineering 434–5, 500–501  
Ricardo, D. 152  
Richardson, M. 357, 363  
Ricketson, S. 157, 169  
right to development (RTD) see multilateral IP and right to development (RTD)  
Rivers, J. 46  
Robinson, P. 193  
Roca, S. 207  
Rodriguez, J. 689  
Rodriguez-Garavito, C. 8  
Roffe, P. 180, 615  
Rogers, W. 389  
Rogoff, M. 238  
rogue sites and Internet border control measures 466  
Rohnke, C. 368  
Rosas, A. 55  
Rosen, M. 479, 488  
Rosina, M. 502, 503  
Rössler, B. 399  
Roucouxas, E. 199  
Ruggiero, R. 473  
Ruggles, D. 554, 557  
Ryman, A. 651  
Sadurski, W. 672  
Saez, C. 534, 586  
Sahai, S. 509, 510  
Sakulin, W. 345, 354, 368, 672  
Salama, I. 607  
Salpin, C. 529–30  
Salzberger, E. 357  
Sambuc, T. 356  
Samuels, Jeffrey M. 513–20  
Samuelson, P. 182, 355  
Sandeen, S. 430  
Sanders, A. 544  
Sari, A. 58, 59  
Schill, S. 106  
Schneider, I. 313  
Schoff, K. 568  
Schokkenbroek, J. 24  
Schonard, P. 282, 291  
Schönherr, F. 681  
Schorkopf, F. 59  
Schovsbo, J. 376, 672  
Schütze, F. 105  
Schwab, F. 359  
Schwartz, R. 532–3  
Schwarze, J. 20, 286  
self-determination goals, indigenous peoples see indigenous peoples, IP rules to support self-determination goals  
Sell, S. 615  
Sen, A. 150, 458  
Senfleben, Martin 354–76, 397, 573, 672  
Sengupta, A. 607  
Seuba, Xavier 173–200  
sexual orientation, equality of human rights 48  
Sganga, Caterina 560–76, 673  
Shand, H. 521  
Shapiro, C. 419  
Shavell, S. 155  
Shaver, L. 562, 563, 673  
Shelton, D. 44  
Sherlock, A. 181  
Sherman, B. 545  
Shestak, J. 671  
Sidak, G. 412  
Siew-Kuan, E. 416  
Silverman, H. 554, 557  
Simon, I. 358, 408  
Simpson, A. 481, 485  
Slade, A. 618
slavery and servitude, prohibition of 44, 45, 46
SMART breeding (precision plant breeding) 531
Smet, S. 43
Smith, A. 150–51
Smith, G. 331, 332
Smith, K. 64
Smith, R.C. 181
Smith, Rhona 52–69
social contract, new see new social contract for protection of intangibles, working towards
social and economic rights, focus on 178–80, 181
social media platforms 116–17
Software Protection Directive, EU 574
Söllner, S. 178
Somé, A. 408
South Africa
Laugh it Off Promotions v. South African Breweries 132, 354
Minister of Health v. Treatment Action Campaign 505–7
right to health 505–7
South Korea, National Human Rights Commission 210
Spain
Constitutional Court and IP 227
freedom of expression and information and IP protection 676
private copying levy 227
trademark law 227
speech chilling effects, digital copyright enforcement measures 468
Spielman, D. 65
Spielmann, D. 331
Sseonyango, M. 645, 653, 654, 655
Stamatopoulou, E. 551, 673
Stauder, D. 190
Stavenhagen, R. 627
Stazi, Andrea 410–20
Steiner, G. 651
Steiner, H. 480
Sterling, J. 91
Stiglitz, J. 495
Stohr, G. 532
Strang, L. 261
Stretton, H. 408
strict necessity principle, proportionality principle 21, 22–3, 24
Strowel, A. 71, 331, 467, 468
Subramanian, S. 419
Sudre, F. 44
Suh, J. 550
Sunder, M. 555
supranational human rights instruments, new social contract for protection of intangibles 667–72
Sustainable Development Solutions Network (SDSN) report 612
Sutherland, A. 598
Sutherland, P. 167
Suthersanen, U. 179
Sutton, M. 224
Suzor, N. 588
Swain, J. 578
Sweden, trade secrets protection 422
Swendiman, K. 261
Sylvander, B. 546
Symonides, J. 553, 560
Szczekalla, P. 286
Tabani, M. 650
Takenaka, Toshiko 253–72
Taubman, A. 628
technological measures
preferential trade agreements (PTAs) 193
technological protection measures (TPMs), legal recognition of 566–7
see also biotechnology; digital copyright enforcement measures; digital technologies; Internet
Teece, D. 412, 413
Teilmann, S. 395
television, EU Television Broadcasting Directive 231, 343–4
Teuber, R. 546
Teubner, G. 70, 392
Thiedig, F. 546
Thomas, Z. 590
Thompson, I. 550–51
Timbers, L. 354
tobacco packaging see public health and trademarks, tobacco plain packaging law
Torremans, P. 71, 89, 331, 411–12
torture, prohibition of 44, 45, 46, 50
Towse, R. 413
Trachtman, J. 176
trade and economic partnerships, digital copyright enforcement measures 471–2
trade secrets and right to property 421–37
economic value 424
EU Charter 424–31
EU Enforcement Directive legislation 427–8, 436
European Convention on Human Rights (ECHR) 421–4
evidence preservation measures 436
exceptions to infringement 433–5
infringement remedies 435–6
lack of agreement by Member States 445–7
liability considerations 432–3
proportionality principle 432
TRIPS Agreement 428–30
TRIPS Agreement and unfair competition 430
unlawful use or disclosure 433
trademark system
and brand image 401–3, 404
broadcasters and sports events, trademark law protection 231
corporate personality rights 391, 392, 393, 397–403, 400, 404
cultural rights and geographical indications 546
EU Trade Mark Directive 397–8, 399, 400–401
European national constitutional courts 227, 228, 231–2
ICANN Top Level Domain process and free speech 385–6, 388
Latin America 241, 251
OHIM see European Trade Mark and Designs Office (OHIM), fundamental rights
registration as possession 81–3
trademark system and freedom of expression, EU trademark law 354–76
absolute grounds for refusal instruments 357–9
absolute grounds for refusal instruments, distinctive character as gatekeeper 359–62
additional exceptions, need for 372–5
associations and meanings attached to trademarks 362–3
balance between protection and freedom of expression 369–75
comparative advertising cases, new exceptions 374
confusion and dilution, protection against 365–6
customer confusion risk 369–70
‘cultural heritage grabbing’ 359
cultural significance 370–72
cultural significance, signs with 358–9, 360–61, 363, 365–6, 370–72
descriptive use exemption 367
distinctiveness requirement, reliance on 369–72
double identity cases 374–5
exclusive rights exceptions 367–8
exclusive rights, scope restriction 362–8
inclusive limits of protection 363–7
misleading and comparative advertising 368
niche reputation 366–7, 368, 373
recognition of need to keep signs free 356–62
‘use in the course of trade’ requirement 363–5, 372
tradition and authenticity, cultural rights and geographical indications 557–8
traditional knowledge, Latin America 251–2
traditional knowledge and IP, Pacific island states 641–58
aid funding and development agendas 645–6
challenges, continuing 655–6
commercial exploitation concerns 656
EU-funded project 649–50, 655
indigenous knowledge and traditional cultural expression (TCE) 643
indigenous people and cultural practice 650–52
indigenous peoples’ determination rights, recognising 653–5
international development agendas 645–8
international perspective 643–5
kava (traditional drink) 651–2
Nagol (land dive) 650–51, 652
Pacific perspective 642–3
Pacific Regional Framework 648–9
regional and international reactions 648–50
traditional IP 652–3
UN Declaration on the Rights of Indigenous People (UNDRIP) 644
UNESCO and culture and development 647
Vanuatu Copyright and Related Rights Act 654
Vanuatu National Cultural Council 654–5
WIPO strategies 646–7
WTO Aid for Trade initiative 646, 655
WTO Enhanced Integrated Framework programme (EIF) 646, 655
see also developing countries; indigenous peoples, IP rules to support self-determination goals
Trans-Pacific Partnership (TPP) Agreement 462–3
‘trap purchases’, fair trial right 445

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
Index 723

UDHR see Universal Declaration of Human Rights (UDHR)

Tribe, L. 466
Triemis, T. 193, 439, 441
‘triple test’, European Convention on Human Rights (ECHR) 333, 350–51

TRIPS Agreement
copyright as trade right 92–4
counterfeiting and piracy 465
cultural rights and copyright, three-step-test 566, 573
cultural rights and database protection 565
cultural rights and geographical indications 545, 547
developing countries and access to medicines 201–2, 205–6
developing countries, flexibilities 208, 563–4
Doha Development Agenda 13, 617–18, 620
enforcement regulations, interpretation of 72, 75–6
European Patent Office (EPO) Boards of Appeal 315
food, right to, and IP protection for plant genetic resources 529
freedom to pursue a trade or profession 109
generic medicines, seizure in transit 10
health rights and patents, shortcomings 498
human rights and international IP law see human rights and international IP law, TRIPS Agreement
indigenous peoples and Convention on Biological Diversity (CBD) overlap 638–9
multilateral IP and right to development (RTD) 617–19, 626
and reverse engineering 500–501
right to food see human rights and international IP law, TRIPS Agreement, right to food and patents and plant variety protection
and right to life 500–501, 510–11
trade secrets and right to property 428–30
TRIPS-Plus protection 7, 207, 208, 212, 535–6
see also WTO (World Trade Organization)

Trivellato, F. 558
Tsarapatsanis, D. 486
Tsoutsanis, A. 359
Tulken, F. 181, 331
Tyrangiel, J. 95

Udagama, D. 153

Ulin, R. 548
Ullrich, H. 415
UN Committee on Economic, Social and Cultural Rights (CESCR) 9, 10
coexistence approach 13

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM via free access
‘Human Rights and Intellectual Property’
interdependence of all human rights 157–8
TRIPS-plus protections concerns 207
UN Convention on Biological Diversity (CBD) 638–9
UN Convention on the Rights of Persons with Disabilities (CRPD) 8, 62, 580–81, 585–6, 594, 595, 598–9
UN Covenant on Economic, Social and Cultural Rights (ICESCR) 560–61, 562
UN Declaration on the Right to Development 606–8
UN Declaration on the Rights of Indigenous Peoples (UNDRIP) 627–8, 633, 638, 644
UN Development Programme (UNDP), right to medical treatment 497–8
UN Durban Review Conference boycott 64–5
UN High-Level Task Force (HLTF) 610–11, 613, 617, 622–3
UN Human Rights Commission 189, 202–3
UN Resolution on Equalization of Opportunities 579–80, 581
UN Security Council involvement 58–60, 61
Underkuffler, L. 431
UNESCO
Convention for the Safeguarding of Intangible Cultural Heritage 252
copyright protection 341
and cultural rights and copyright 560, 561–2
Universal Declaration on Cultural Diversity 554, 555
Universal Declaration on the Human Genome and Human Rights (HGD) 481
Universal Declaration of Human Rights (UDHR) 6
copyright and rights of authors 340
cultural rights 552, 567–8
cultural rights and geographical indications 552
equality of human rights 39–40
European Patent Office (EPO) Boards of Appeal 315–16, 322
exclusive rights 239
freedom of expression 170, 456, 457
human dignity and patents 485
new social contract for protection of intangibles 672, 673, 674, 686, 687–8
philosophical foundations of IP 91–2, 93, 94, 95
property protection of works and inventions 142, 157, 459
right to food 522
rights over private property 151
standard of living and health and well-being right 161
US
American Convention on Human Rights (ACHR) 668
American Declaration of the Rights and Duties of Man 667–8, 672
Columbian-US fair trade agreement 224–5
Constitution and public-interest considerations 674–5
copyright review limitations 141–2
Digital Millennium Copyright Act (DMCA) 339–40, 463, 465, 567
Family Smoking Prevention and Tobacco Act 520
food and non-patentable invention categories 531–2
freedom of expression right 12
human dignity and biotech applications 489–91
human rights primacy argument 12
Internet access right 456
Leahy-Smith America Invents Act (AIA) 267
multilateral IP and right to development (RTD), opposition to 608, 611–12, 616–17, 625
non-patentable invention categories 531–2
patents on biological organisms 487, 493–4
Peer to Peer Piracy Prevention Act 466–7
proportionality of sanctions 454
Stop Online Piracy Act (SOPA) 466
Thai–US FTA 209–10
trade secrets as property 423
US-Peru FTA 206–7, 211
willful piracy or counterfeiting on a commercial scale 193
US, cases
Abbott Labs. v. Andrx Pharm. 271
Abbott Labs. v. Sandoz 253
Animal Legal Def. Fund v. Quigg 267
Ashwander v. Tennessee Valley Auth. 253, 260
Ass’n for Molecular Pathology v. U.S. Patent & Trademark Off. 265
Authors Guild v. Hathi Trust 600

724  Research handbook on human rights and intellectual property

Christophe Geiger - 9781783472420
Downloaded from Elgar Online at 04/20/2019 09:37:34AM
via free access
right to physical property 242
Vienna Convention on the Law of Treaties (VCLT)
conflict clauses 197, 198
intersections with IP rights and human rights, European courts addressing 76, 83, 84
Programme of Action, multilateral IP and right to development (RTD) 609
treaty interpretation guidelines 195–6, 198, 199
Viljanen, J. 19–20
Villiger, M. 195
Vincent, M. 64
Visser, B. 538
Vitkauskas, D. 189
Vivant, M. 90, 662
Vivas-Eugui, D. 535
Vivien, D. 548
Volokh, E. 181
Von Bogdandy, A. 106, 237, 238
Von Kapff, Philipp 273–310
Voon, T. 85
Voorhoof, Dirk 86, 331–5, 672, 682
Wade, R. 646
Wadlow, C. 430
Waelde, Charlotte 577–602
Wager, Hannu 149–72
Waldron, J. 96, 479, 485
Walker, S. 461
Ward, A. 55
Warner, S. 366
Watal, Jayashree 149–72, 187, 526
Watts, A. 195
Weckström, K. 672
Wegener, B. 286
Weihlau, A. 181
Weiler, J. 671
Weissbrodt, D. 568
Weissner, S. 644
Welkowitz, D. 669
Westkamp, Guido 389–409, 573
Wheatland, T. 182
White, R. 83
Wichard, C. 286
Wickliffe, C. 643
Wildhaber, L. 334, 667
Wilf, S. 363
Williams, A. 130
Williams, S. 238
wine appellations, legal regulation of 547–8
WIPO (World Intellectual Property Organization)
Development Agenda 176, 619–26
digital copyright enforcement measures 465
exceptions and limitations to IP rights 8
Internet Treaties 564, 565, 566–7, 568
Marrakesh Treaty 587–8, 590, 594, 596–8, 599, 622–3
new social contract for protection of intangibles 677–8
Performances and Phonograms Treaty (WPPT) 244, 465
published works for visually impaired persons 13
shared language concerns 615
traditional knowledge protection 628–9, 632, 646–7
World Blind Union (WBU) and WIPO negotiations 585–6
see also Berne Convention
Wolfgang, H. 309
Wong, M. 666
Wong, T. 606
World Health Organization (WHO) 14, 164, 201–2
World Intellectual Property Organization (WIPO) see WIPO
WTO (World Trade Organization)
Aid for Trade initiative 646, 655
Canada – Pharmaceutical Patents 160
China – IPRs 169
developing countries and WTO membership 153–4
dispute settlement system 154, 160, 176, 212
Doha Declaration on the TRIPS Agreement and Public Health 206
EC – Bananas III 154
EC – Trademarks and Geographical Indications 160
Enhanced Integrated Framework programme (EIF), traditional knowledge and IP, Pacific human rights and international IP law 152–4
island states 646, 655
pharmaceutical patent protection 96–7
TRIPS see TRIPS Agreement
US – Copyright Act 160
US – Upland Cotton 154
Xiong, P. 206
Index 727

Yamin, A. 8–9
Yap, P. 372
Yildirim, H. 412
Yourow, H. 19
Yu, Peter K. 7, 176, 177, 180, 181, 236, 412, 431, 455–76, 519, 541, 569, 575, 605, 614, 615, 666
Yupsanis, A. 552, 553–4
Ziegler, K. 61, 551–2, 553, 555
Žikovská, P. 508
Zimmerman, D. 355
Zylberg, P. 557