Index

Abbott, Andrew 34
Abbott, Frederick 206, 218
abuse risk, private enforcement of IP law by internet service providers 245
see also risk factors
adoption phase 9–10, 24–5
collective agreements for clearance of copyright, extended collective licence (ECL) 71–2
cross-border online licensing models 96–7
Danish Domain Names Act as adoption and autonomy space 226–7
open source licences 113
patent pools and IP coordination models 133, 144, 145
private enforcement of IP law by internet service providers 239–50
Android operating system 107
Antonelli, Cristiano 157
Aoki, Reiko 117, 118, 138, 140
Armonia one-stop-shop licensing platform 85, 95, 96, 97
see also cross-border online licensing models
asymmetric information
collective agreements for clearance of copyright, extended collective licence (ECL) 65–7
cross-border online licensing models 93
open source licences 111
patent pools and IP coordination models 130–31, 142, 145
private enforcement of IP law by internet service providers 234–5
standard setting organizations (SSOs) and governance problems 155
see also emergence phase
Aufderheide, Patricia 51–2
autonomy spaces 5, 10–12, 13–14, 18
cross-border online licensing models 89–91
Danish Domain Names Act as 226–7
patent pools and IP coordination models 128–9, 142, 145, 146–7
private enforcement of IP law by internet service providers 11–12, 229–32, 246, 247–50, 250
standard setting organizations (SSOs) and governance problems 176–7
Baran, Paul 152, 157
Baron, Justus 156, 162
Bekkers, Rudi 161, 165, 166
Benkler, Yochai 36
Bergström, Svante 59–60
Berne Convention for the Protection of Literary and Artistic Works 56, 60, 100
Besen, Stanley 90
best practices
Best Practice Guidelines for Ad Networks, US 238
knowledge commons and information abundance 49–53
Bettinger, Torsten 215
biomedical sector and patent clearinghouses 139, 140–42, 143, 144
see also technology
Blair, Roger 246
blanket licences 63–4, 87

271
User generated law

Blind, Knut 154
Bohannan, Christina 163
Bone, Robert 15
Brenner, Steffen 117
Bresnahan, Timothy 151, 156
Bridy, Annemarie 242
broadcasting, extended collective licence (ECL) 59–60, 61–2, 70–71, 72
Brooks, Roger 171
Burk, Dan 121, 122, 206, 210, 218
Burton, Steven 35

Canada, copyright and extended collective licence (ECL) 70
Capobianco, A. 80
Capria, Mary 123
Cargill, Carl 152, 153, 159
Carrier, Michael 170, 178
Caulfield, Timothy 121, 125
CELAS (Central European Licensing and Administration Services) 83, 94–5, 96
chefs and recipe protection 19, 49–50
Chesbrough, Henry 115–16
China, copyright and extended collective licence (ECL) 70
Christie, Andrew 230
Clark, Jeanne 116
clearinghouses 125, 130, 132–3, 137–42, 143, 144
see also patent pools and IP coordination models
Codiglione, G. 90
Cohen, Julie 31
collective agreements for clearance of copyright 55–76
blanket licences 63–4, 87
collective management organizations (CMOs) see collective management organizations (CMOs)
cultural heritage digitization 62
demand flexibility and statutory limitation 63–4
individualization issues 73–4, 75
mass digitization 62, 70, 72
monopolization risks and misuse of market power 64–5
orphan works 62, 69
reciprocal representation agreements (RRAs) 57–8
representation of right holder 58–9, 72–4, 75
transaction costs reduction 56, 64
collective agreements for clearance of copyright, extended collective licence (ECL)
adoption and integration into state-enacted law 71–2
asymmetric information 65–7
broadcasting 59–60, 61–2, 70–71, 72
dissemination 67–71
dissemination to other jurisdictions 69–70
emergence of 59–67
exclusivity to liability rule change 58–9
expectation of benefits 64–5, 74
future challenges 72–3
heterogeneous demands 62–4
lead users’ role 67, 73
national management 66
patent pools 68
photocopying in schools and by enterprises 61
technological protection measures (TPMs) 72
user restrictions 72
collective management organizations (CMOs)
collective agreements for clearance of copyright 55–8, 73–5
cross-border online licensing models 83, 90–91, 94
user involvement concerns 74–5
Collective Rights Management (CRM) Directive, EU 78–9, 84, 85–6, 87–8, 92–3, 95, 96–7
collective self-governance of shared technology platforms 156–9
comedians and joke protection 19–20, 49–50
commercial uses of domain names to identify goods or services 217–19
see also domain names, private legal governance
competition concerns, customer allocation and cross-border online licensing models 80–81
competition law
clearinghouses 140
standard setting organizations (SSOs) and governance problems 168–79
computer programs, open source licences see open source licences
Cook-Deegan, Robert 121
coordination and combination dilemmas 30, 31, 32, 34–5, 36–7, 39–40
see also knowledge commons and information abundance
copyleft provisions 23–4, 102, 105–6, 107, 112
copyright
Best Practices Statements and fair use guide for creative practices, US 50–52
collecting society, first (Société des Auteurs et Compositeurs Dramatiques (SACD)), France 22
collective agreements see collective agreements for clearance of copyright
Copyright Act and computer program protection, US 100
Copyright Alert System (CAS), US 238
open source licences 99–101, 107–8, 111
Cordes, Albrecht 4
cost factors
collective agreements for clearance of copyright 56, 64
cross-border online licensing models 84
national courts and domain names, private legal governance 216
patent pools and IP coordination models 122, 129–30, 132, 134, 138–9, 141, 143
Cotter, Thomas 150, 163, 175, 246
country code Top Level Domains (TLDs) (ccTLD) 209, 213–17, 222–5, 226–7
Creative Commons licensing 16–17, 22
copyleft provisions 23–4
open source licences 112–13
patent pools and IP coordination models 131–2
see also knowledge commons and information abundance; open source licences
creative practices’ protection guidelines 49–52
criticism of trademark holder (hate sites) 219, 222–5
cross-border online licensing models 77–98
Armonia one-stop-shop licensing platform 85, 95, 96, 97
autonomy spaces and interdependencies between the licensing models 89–91
blanket licences 63–4, 87
CMO regulation methods 90–91
CMO vested interests 94
CMOs, multi-territorial subsidiaries 83
cost factors 84
customer allocation and competition concerns 80–81
independent management entities (IMEs) 87–8, 91
licensing hubs formed by author CMOs for online use of music 85–6, 96
model contracts as user generated law 79–82
multi-territorial licensing from Single Market perspective (EU) 81–2
multi-territorial mono-repertoire direct licensing 83–4, 85–6, 91, 94–5, 96
national collective management organizations, and reciprocal representation agreements (RRAs) 80–81, 90–91
operational challenges 88–9
royalty rate issues 86–7
simulcasting or webcasting 82
cross-border online licensing models, as user generated law 89–97
adoption phase 96–7
asymmetric information 93
diffusion phase 96
emergence phase 91–5, 97
expectation of benefits 92–3
heterogeneous demand for legal solutions 92
lead users’ role 93–5, 97
cultural heritage digitization 62
customer allocation, cross-border online licensing models 80–81
cybersquatting 209–13, 218, 219–22, 224, 225
see also domain names

Dahin, Violaine 80
Darling, Kate 49
data sharing rights 43–4
see also knowledge commons and information abundance
David, Paul 150, 156
De Vries, Henk 155
Dedrick, Jason 153
Dehin, V. 83
democratic governance 246–7
see also governance
Denmark
Dansk Internet Forum (DIFO) 209, 213
domain name regulation 209, 213–17, 218, 222–5, 226–7
lore-seat.dk decision 222–4
derivative works 23–4, 103
diffusion phase 9–10, 22–4
cross-border online licensing models 96

ICANN (Internet Cooperation for Assigned Names and Numbers)
model diffusion 227
open source licences 112–13
patent pools and IP coordination models 132–3, 137, 143–4, 145
private enforcement of IP law by internet service providers 236–8
digitization, and collective agreements for clearance of copyright 62, 70, 72

Dinwoodie, Graeme 207, 211, 216, 218
dispute resolution
domain names, private legal governance 206–17
private enforcement of IP law by internet service providers 243–5
Uniform Domain Name Dispute Resolution Policy (UDRP) 207–8, 209–13, 216, 217, 219–22, 224, 225, 227
dissemination, collective agreements for clearance of copyright 67–71
distribution requirements, open source licences 104
domain names, private legal governance 206–27
commercial uses to identify goods or services 217–19
cost factors for national courts 216
country code Top Level Domains (TLDs) (ccTLD) 209, 213–17, 222–5, 226–7
cybersquatting (domain name grabbing) 218
cybersquatting and UDRP system 209–13, 219–22, 224, 225
Danish Complaints Board 214–15, 216–17
Danish domain name regulation 209, 213–17, 222–5, 226–7
Danish Domain Names Act as adoption and autonomy space 226–7
Index

dispute resolution framework 206–17

domain names expressing criticism of trademark holder (hate sites) 219, 222–5

first-come-first-served principle 218

ICANN (Internet Cooperation for Assigned Names and Numbers) 207, 208, 209, 210, 216

ICANN (Internet Cooperation for Assigned Names and Numbers) as lead actor 225–6

ICANN (Internet Cooperation for Assigned Names and Numbers) model diffusion 227

legitimate interest principle (UDRP) 219–20

precedents system 211, 212–13, 216

risk-of-confusion standard (UDRP) 219–20

substantive law conflicts 217–25

trademarks as domain names 217–24

trademarks as domain names, and UDRP 219–22

Uniform Domain Name Dispute Resolution Policy (UDRP) 207–8, 209–13, 216, 217, 219–22, 224, 225, 227

user generated law 225–7

user generated law, diffusion 227

WIPO Center’s list of Domain Name Panelists 210–11

WIPO Overview of WIPO Panel Views on Selected UDRP Questions 212–13, 216, 219, 220–22, 227

dominant position abuse, standard essential patents access 182–3, 184–5, 187, 189, 191–2, 194, 198–9, 200, 201

see also risk factors

Donaldson, Michael 52

Drahozal, Christopher 4

Drexl, Josef 78, 82, 185

Dykman, Harry 37, 118


Ebersole, Ted 123

Eisenberg, Rebecca 30

Ellickson, Robert 17

emergence phase 9–10, 12–22

collective agreements for clearance of copyright 59–67

cross-border online licensing models 91–5, 97

open source licences 109–12


private enforcement of IP law by internet service providers 229–36

see also asymmetric information; expectation of benefits; heterogeneous demands; lead users’ role

English, Robert 39

EU

Collective Rights Management (CRM) Directive 78–9, 84, 85–6, 87–8, 92–3, 95, 96–7

copyright and extended collective licence (ECL) 69–70


European association of ISPs (EuroISPA) 236, 237

European Licensing Passport 86

European Telecommunications Standards Institute (ETSI) 174, 189, 204

European Union Public Licence (EUPL) (open source standard) 20–21, 107

independent management entities (IMEs) 87–8, 91

Infosoc Directive 69

multi-territorial licensing from Single Market perspective 81–2, 84, 85–6, 87–8, 92–3, 95, 96–7
national collective management organizations, and reciprocal representation agreements (RRAs) 80–82
Open Source Strategy 2014–2017 114
Orphan Works Directive 69 private enforcement of IP law by internet service providers 248–9
Recommendation 2005/737/EC on collective cross-border management of copyright and online music services 82, 84, 96
standard essential patents (SEPs) and injunctive relief 172–4, 189
standard setting organizations (SSOs) assessment 169
EU, cases
Broadcom Corp. v. Qualcomm 168
CISAC v. European Commission 81, 84, 94–5, 97
Google Opinion 183–4, 186, 187, 188, 190, 195, 197, 200
Google Spain SL, Google Inc. 233
Huawei 174, 180–81, 185, 190, 191–203
IMS Health v. NDC Health 184–5, 189, 200
ITT Promedia/Protégé International 199
L’Oréal 240
Magill 184–5, 200
Micro Business Leader 199
Microsoft v. Commission 184–5, 189
Motorola 184, 186–90, 195, 198
Orange-Book-Standard 182–6, 187–8, 191, 192–3, 194, 198
Rambus 170–71
RTE and ITP v. Commission 184
Sabol 240
Samsung 186–7, 189, 190, 191–4, 195, 197, 198, 200
Scarlet Extended 240
UPC Telekabel 240, 246
EU competition law, standardization rise and limits of self-governance 180–205
EU Commission investigations 186–90
European Telecommunications Standards Institute (ETSI) role 189
‘exceptional circumstances’ doctrine 184–5, 189–90, 194–5, 199, 200, 205
new product requirement 185 royalty rates 183, 187–8, 191, 193, 195–6, 200, 202, 203
safe harbour and Article 102 TFEU 190, 191, 193–4, 197, 200–201, 202
standard essential patents access and dominant position abuse 182–3, 184–5, 187, 189, 191–2, 194, 198–9, 200, 201
standard essential patents access and fair, reasonable and non-discriminatory (FRAND) terms 180–81, 183–4, 186–90, 193–7, 198, 200–201, 202–3, 205
standard essential patents access and injunctive relief 182–3, 185–6, 190, 191–7, 199, 200–201, 202–3
standard essential patents, validity verification 196–7, 201
and Universal Mobile Telecommunications System (UMTS) technology licensing 189
and user generated law model 203–4 ‘exceptional circumstances’ doctrine, EU competition law 184–5, 189–90, 194–5, 199, 200, 205 exclusivity to liability rule change, extended collective licence (ECL) 58–9 expectation of benefits collective agreements for clearance of copyright 64–5, 74
cross-border online licensing
models 92–3
open source licences 109–10
patent pools and IP coordination
models 129–30, 135, 136, 137,
138–9, 141, 143, 145
private enforcement of IP law by
internet service providers 233–4
standard setting organizations
(SSOs) and governance
problems 150–51, 155, 161
see also emergence phase; royalties
extended collective licence (ECL) see
collective agreements for
clearance of copyright, extended
collective licence (ECL)

Fagundes, David 15, 17
Farber, David 152
Farrow, Trevor 247
fashion industry, design protection 20
Fauchart, Emmanuelle 19
‘few sizes fit all’ manufacturing strategy
6, 129
filtering technologies 234
Firefox browser 107
first-come-first-served principle,
domain names 218
Fitzgerald, Brian 243, 245, 251
focal point theory and knowledge
commons 34–5
fragmentation concerns, patent pools
and IP coordination models 122–4
France
  Bureau de Legislation Dramatique
  56, 57
copyright collecting society, first 22
  Société des Auteurs, Compositeurs
  et Editeurs de Musique
  (SACEM) 57
  Société des Auteurs et Compositeurs
  Dramatiques (SACD) 56–7
FRAND terms
  EU competition law, standardization
  rise and limits of
  self-governance 180–81, 183–4,
  186–90, 193–7, 198, 200–201,
  202–3, 205
patent holdups and standard setting
organizations (SSOs) 172–5,
177–9
patent pools and IP coordination
models 134
standard essential patents (SEPs)
148–9, 165, 166–8
Free and Open Source Software (FOSS)
159–60, 167
Free Software Foundation (FSF) and
GNU project 22, 23, 24, 26,
101–2, 104, 105, 106–7, 109, 110,
111–12
free-ridership risk 29, 158
see also risk factors
Frischmann, Brett 29, 31, 33, 41, 42, 54,
158, 159
Gabuzda, Lawrence 183, 184
Galaxy Zoo information resource 46–9
Gallo, Andres 211, 218
Gauch, Stephan 154
Geist, Michael 211, 219
Genn, Hazel 247
Geradin, Damien 150, 171, 177
Germany
domain name conflict resolution
209
Motorola v. Apple 183–4
one-stop-shop licensing platform 85
Orange-Book-Standard 182–6,
187–8
Philips v. Sony Ericsson 183
RTL complaint against CMO
GEMA 81
Tight-Head Drum 185
Gervais, Daniel 66
Giblin, Rebecca 245
Gibson, James 52
Gilbert, Richard 144
Global Music Rights (GMR), US 87
Global Repertoire Database 88
GNU project, Free Software Foundation
(FSF) 22, 23, 24, 26, 101–2, 104,
105, 106–7, 109, 110, 111–12

Index 277
User generated law

governance
democratic governance and private enforcement of IP law by internet service providers 246–7
knowledge commons 33–5, 44–5, 50
standard essential patents (SEPs) governance problems 150–51, 160–62
standard setting organizations (SSOs) see standard setting organizations (SSOs) and governance problems see also state-enacted laws
government involvement, patent pools 118
Graham, Ian 151
Grassler, Frank 123
Greenstein, Shane 150, 156
Grindley, Peter 168
Grøtnes, Endre 156
Guellec, Dominique 116
Guilbault, Lucie 78, 80, 83, 84, 87
Gyertyánfy, Peter 80, 81, 84, 95
Hadfield, Gillian 2, 12, 14, 32, 35
Handke, Christian 63
Hardin, Garrett 157
hate sites, domain names expressing criticism of trademark holder 219, 222–5
Helfer, Laurence 207, 208, 211, 216, 218
Heller, Michael 30
heterogeneous demands
collective agreements for clearance of copyright 62–4
cross-border online licensing models 92
patent pools and IP coordination models 129, 130–31, 142, 145
private enforcement of IP law by internet service providers 232–3
standard setting organizations (SSOs) and governance problems 154, 155
see also emergence phase
historical contingency role, knowledge commons 42–4
Hope, Janet 123
horizontal cooperation, standard setting organizations (SSOs) 168–71, 176
Horn, L. 135, 137, 142
Hovenkamp, Herbert 163, 169, 171
Howells, John 118
Hugenholtz, P. Bernt 235
Huys, Isabelle 121
ICANN (Internet Cooperation for Assigned Names and Numbers) 4, 207, 208, 209, 210, 216, 225–6, 227
ICT sector, standard setting organizations (SSOs) see standard setting organizations (SSOs) and governance problems, ICT sector
identification, commercial uses to identify goods or services 217–19
independent management entities (IMEs), cross-border online licensing models 87–8, 91
individualization issues, collective agreements for clearance of copyright 73–4, 75
information abundance, and knowledge commons see knowledge commons and information abundance
information transfer access, standard setting organizations (SSOs) 153, 157, 158, 162–5
Infosoc Directive, EU 69
injunctive relief 172–4, 182–3, 185–6, 189, 190, 191–7, 199, 200–201, 202–3
innovation
effects, standard setting organizations (SSOs) 149, 152, 156, 158, 159–60, 162–3, 171
legal 5–6, 8, 17, 22–3, 24–5
patent pools and open innovation 115–16
product 5, 6, 7–8, 10, 11, 14–15, 17, 127
Index

technological, and private enforcement of IP law by internet service providers 234
institutional analysis, knowledge commons 34–5, 42–3, 45
intellectual resources and artificial scarcity 29–30
International Confederation of Authors and Composers Societies (CISAC) 22, 81
Internet Policy Task Force, US 249
internet service providers, private enforcement of IP law see private enforcement of IP law by internet service providers
Iversen, Eric 171

Jakobs, Kai 151, 155, 164
Jaszi, Peter 51–2
Jehoram, Cohen 63
Johnson, Justin 160
joint licensing schemes, patent pools and IP coordination models 134–5
jurisdiction differences, private enforcement of IP law by internet service providers 229–30, 232–3, 235–8

Kahan, Marcel 35
Karnell, Gunnar 20, 66
Katz, Andrew 113
Katz, Ariel 78, 86
Katznelson, Ron 118
Kelty, Christopher 39, 154
Kesan, Jay 167, 211, 218
Kieff, F. Scott 151
Kindleberger, Charles 157
Kirby, Sheila 90
Klausner, Michael 35
knowledge commons and information abundance 28–54
best practices projects 49–53
case study investigation 43–5
challenges of abundance 33–4
commons governance dynamics 44–5, 50
community sharing and openness 44
comparative institutional analysis 43
coordination and combination dilemmas 30, 31, 32, 34–5, 36–7, 39–40
creative practices’ protection guidelines 49–52
data sharing rights 43–4
Galaxy Zoo information resource (citizen science data analysis) 46–9
goals of common governance, identification of 44
historical contingency role 42–4
Institutional Analysis and Development (IAD) framework and knowledge commons framework, differences between 42–3, 45
institutional solutions and focal point theory 34–5
intellectual property (patent) pools and cross-licensing 37–8
intellectual resources and artificial scarcity 29–30
knowledge commons governance 33–5
knowledge commons meaning 31–2
law as form of governance 36
law as knowledge commons 35–40
natural resource commons governance comparison 33
open source software 38–40
patent rights 43
production and distribution, social dilemmas on 30, 33, 34–7
public domain data 43
research framework 41–5
research framework application 46–53
resource identification 44
social dilemmas of group identity and membership 49–50
spillover benefits 41–2, 45, 48–9
third party rights holders and shared governance norm 50
see also open source licences
Kobayashi, Bruce 2, 172
Kokoulina, Olga 148–79
User generated law

Krattiger, Anatole 123, 137, 138
Kretschmer, Martin 57, 63
Kuhn, Kai-Uwe 149
Kur, Annette 186, 211, 218, 219
LaFrance, Mary 242–3
Layne-Farrar, Anne 151, 161, 162, 171, 172, 178
lead users’ role
collective agreements for clearance of copyright 67, 73
cross-border online licensing models 93–5, 97
ICANN (Internet Cooperation for Assigned Names and Numbers) 225–6
open source licences 111–12, 113
patent pools and IP coordination models 131–2, 137, 140–41, 143, 145
private enforcement of IP law by internet service providers 235–6, 240
see also emergence phase
legitimate interest principle, domain names 219–20
Lemley, Mark 33, 121, 122, 169, 171, 231
Lerner, Josh 117, 156
Lessig, Lawrence 30
Lewis, David 35
lex mercatoria rules 3–4
Librassay ‘licensing supermarket’ 140–42, 143, 144
licensing
Creative Commons see Creative Commons
cross-licensing and patent pools 37–8, 119
FRAND terms 134
joint licensing schemes, patent pools and IP coordination models 134–5
Librassay ‘licensing supermarket’ 140–42, 143, 144
MPEG Licensing Authority (MPEG LA), and patent pools 135–7, 140, 142, 143–4, 145
multi-territorial licensing from Single Market perspective, EU 81–2, 84, 85–6, 87–8, 92–3, 95, 96–7
multi-territorial mono-repertoire direct licensing 83–4, 85–6, 91, 94–5, 96
one-stop-shop 85, 95, 96, 97
online licensing models, cross-border see cross-border online licensing models
open source see open source licences
patent disclosure policy and licensing commitments 165–8
third-party licensing and patent pools 134–5
Lindsay, David 206, 211, 212, 221
Linux software collaborative 38–9, 107
Liotard, Isabelle 161
lobbying demands, patent pools and IP coordination models 131
Loshin, Jacob 20, 50
Lüder, Tilman 80, 81, 82, 95, 96
Lundqvist, Bjorn 169, 180–205
McAdams, Richard 35
McCracken, Grant 34
McDonagh, Luke 108
McFarlane, Gavin 57
McMeekin, Andrew 151
Madison, Michael 28–54
magicians and trick protection 19–20, 49–50
Malawi, copyright and extended collective licence (ECL) 70
market power, misuse, and monopolization risks 64–5
see also risk factors
mass digitization 62, 70, 72
Mazzolli, Giuseppe 83
Merges, Robert 20, 37, 117, 121, 139
Michaels, Ralf 4
Minssen, Timo 146, 148–79
model contracts as user generated law 79–82
mono-repertoire direct licensing 83–4, 85–6, 91, 94–5, 96
monopolization risks and misuse of market power 64–5
see also risk factors
Monroe, Hunter 156
Mossoff, Adam 38
MPEG Licensing Authority (MPEG LA), and patent pools 135–7, 140, 142, 143–4, 145
MPEG-2 pool model 117, 119
Mueller, Milton 208
Müller, Florian 160, 166, 167
multi-territorial licensing from Single Market perspective, EU 81–2, 84, 85–6, 87–8, 92–3, 95, 96–7
multi-territorial mono-repertoire direct licensing 83–4, 85–6, 91, 94–5, 96
Mutkoski, Stephen 167
Møgelvang-Hansen, Peter 215
Nagaoka, Sadao 122
Nathenson, Ira 231
national collective management organizations, and reciprocal representation agreements (RRAs) 80–82, 90–91
Netherlands copyright and extended collective licence (ECL) 70
National Infrastructure against Cyber Crime 237
Netscape Communication free software 102
Network of Music Partners (NMP) 88–9 new product requirement, EU competition law 185
Nguyen, Godefroy 86
Nicol, Dianne 123
Nishimura, Yoichiro 122
Noehrenberg, Eric 123
non-discrimination requirements, open source licences 103–4
non-economic benefits 110, 130
Nordic Copyright Acts 59–62, 63, 65–6, 70–71, 74
Nordisk Copyright Bureau (NCB) 85, 95
Norway Cable Dispute Tribunal (Kabeltvistnemda) 65–6
National Library, user restrictions on digitized database 72
notice and action procedures see private enforcement of IP law by internet service providers, notice and action procedures
notice-and-takedown system 230, 235–6, 249
Ogus, Anthony 10, 13
O’Hara, Erin 11, 18
Oliar, Dotan 19
one-stop-shop licensing 85, 95, 96, 97
one-stop-shop model, patent pools 130, 134, 145
online licensing models, cross-border see cross-border online licensing models
OnLineArt SCRL 95
open access clearinghouse 138
open innovation, patent pools 115–16
Open Source Initiative (OSI) definition and requirements 103–7, 109, 112
open source licences 99–114 copyleft clauses 102, 105–6, 107, 112
and copyright legislation 107–8, 111
copyright protection of computer programs, history of 99–101
copyright protection of computer programs, rights not protected 100–101
Creative Commons see Creative Commons licensing
derived works 103
distribution requirements 104
European Union Public Licence (EUPL) (open source standard), EU 20–21, 107
User generated law

Free Software Foundation (FSF) 22, 23, 24, 26, 101–2, 104, 105, 106–7, 109, 110, 111–12
history and philosophy 101–5
key principles 106
legal protection of computer programs 99–101
non-discrimination requirements 103–4
non-specificity of licence 104
Open Source Initiative (OSI)
definition and requirements 103–7, 109, 112
practical use of open source software 106–7
and redistribution 103
source code 103
sui generis protection of computer programs 99
technology neutrality requirement 104
see also knowledge commons and information abundance
open source licences, and user generated law model 109–13
adoption phase 113
asymmetric information 111
diffusion phase 112–13
emergence phase 109–12
expectation of benefits 109–10
lead actor roles 111–12, 113
non-economic benefits 110
open source software
Free and Open Source Software (FOSS) 159–60, 167
knowledge commons and information abundance 38–40
Open Source Strategy 2014–2017, EU 114
open systems concept, standard setting organizations (SSOs), ICT sector 153–5, 156–9, 162–3
opportunistic behaviour risks 149, 162, 163–4, 172–5
see also risk factors
orphan works 62, 69
Ostrom, Elinor 33, 42, 44, 45
over-deterrence effects 231, 246
see also risk factors
over-exclusion potential, standard setting organizations (SSOs) 158, 176
Patent Commons Project 160
patent disclosure policy, standard setting organizations (SSOs) 165–8
patent holdups, standard setting organizations (SSOs) 163–4, 166, 167–8, 170, 172–5, 177–9
see also risk factors
patent pools, collective agreements for clearance of copyright 68
patent pools and IP coordination models 115–47
actor most appropriate to take initiatives forward 126
advisory organs, national and international 123–4
biomedical sector and clearinghouses 139, 140–42, 143, 144
and biotechnology 123–5
clearinghouses 125, 130, 132–3, 137–42, 143, 144
clearinghouses, competition law framework 140
clearinghouses, for-profit or non-profit 139–40, 143
clearinghouses, and freedom to operate 139
cost factors 122, 129–30, 132, 134, 138–9, 141, 143
Creative Commons licensing 131–2
cross-border factors 119
fragmentation concerns 122–4
government involvement 118
hybrid ’public/private’ IP coordination mechanisms 119
joint licensing schemes 134–5
Librassay ‘licensing supermarket’ 140–42, 143, 144
licensing under fair, reasonable and non-discriminatory (FRAND) terms 134
lobbying demands 131
MPEG Licensing Authority (MPEG LA) 135–7, 140, 142, 143–4, 145
MPEG-2 pool model 117, 119
one-stop-shop model 130, 134, 145
open access clearinghouse 138
open innovation 115–16
patent coordination mechanisms 120–21
patent pool definition 133–4
patent pools, benefits to patent owners 134
patent pools and clearinghouses as two-sided markets 125, 130, 132–3
patent thickets 121–2, 141–2, 144
Philips-pool 135, 143, 144, 145
public international organizations’ involvement 119
royalty collection clearinghouse 138–9
social capital theory 118
stakeholder involvement 125–6, 130, 143–4, 146
standard licences clearinghouse 138, 139
synthetic biology 146–7
technology exchange clearinghouse 138
third-party licensing 134–5
tragedy of the anticommons 121–2
patent pools and IP coordination models, and user generated law 118–19, 126–33
adoption phase 133, 144, 145
asymmetric information 130–31, 142, 145
autonomy space 128–9, 142, 145, 146–7
diffusion phase 132–3, 137, 143–4, 145
expectation of benefits 129–30, 135, 136, 137, 138–9, 141, 143, 145
heterogeneous demands 129, 130–31, 142, 145
lead actor role 131–2, 137, 140–41, 143, 145
network effects 132–3, 137, 145
non-economic benefits 130
reputation effects 130, 132, 137, 145
State-enacted law and autonomy space 128–9, 142
patent rights, knowledge commons 43
patent thickets 121–2, 141–2, 144
Patent and Trademark Office (USPTO) and biotechnology 124–5
Patry, William 245
Perzanowski, Aaron 49
Petersen, Clement 228–51
Philips-pool 135, 143, 144, 145
photocopying, extended collective licence (ECL) 61
Pohlmann, Tim 156, 157
precedents system, domain names 211, 212–13, 216
primary law enforcement on internet platforms 239–40
private enforcement of IP law by internet service providers 228–51
de facto and de jure autonomy spaces 11–12, 229, 230–32, 246
filtering technologies 234
liability exemptions 232, 233
over-deterrence effect 231
safe harbours 231, 233–5, 239, 240
technological innovation 234
private enforcement of IP law by internet service providers, notice and action procedures
abuse risk 245
adoption as legislative correction of autonomy spaces 247–50
adoption stage 239–50
asymmetric information 234–5
autonomy spaces and standards of liability for ISPs 229–32, 250
democratic governance 246–7
diffusion stage 236–8
dispute resolution and due process 243–5
emergence of 229–36
User generated law

expectation of benefits 233–4
freedom of expression 246
future perspectives 250
heterogeneous demands 232–3
lead user role 235–6, 240
notice-and-takedown system 230, 235–6, 249
over-deterrence risks 246
primary law enforcement on internet platforms 239–40
principle of accuracy 244
problems with 241–7
recent developments in EU 248–9
recent developments in US 249–50
third party litigation options 240–41
transparency, lack of 231, 235, 236, 242, 244–5, 246, 248
private legal governance, domain names
see domain names, private legal governance
private regulatory models 3–4, 5, 8–11, 15–16, 17, 19, 25–6, 127
product innovations 5, 6, 7–8, 10, 11, 14–15, 17, 127
production and distribution, social dilemmas on 30, 33, 34–7
profits, clearinghouses, for-profit or non-profit 139–40, 143
public domain data 43
public goods, standards as 157
public international organizations’ involvement 119
public policy protection 10, 13, 18, 20, 24–5
public/private IP coordination mechanisms 119
Quilter, Laura 229, 231, 246
Raustiala, Kal 20, 30
reciprocal representation agreements (RRAs) 57–8, 80–81, 90–91
redistribution, and open source licences 103
Reich, Norbert 11
representation of right holder, collective agreements for clearance of copyright 58–9, 72–4, 75
reputation effects 23, 24, 130, 132, 137, 145, 164
Resnik, Judith 247
Ribstein, Larry 2, 11
Riccio, G. 90
Riis, Thomas 1–27, 55–76, 80, 83, 90, 92, 127, 128, 129, 131, 133, 226, 228–51
risk factors
abuse risk, private enforcement of IP law by internet service providers 245
dominant position abuse, standard essential patents access 182–3, 184–5, 187, 189, 191–2, 194, 198–9, 200, 201
free-ridership 29, 158
monopolization and misuse of market power 64–5
opportunistic behaviour 149, 162, 163–4, 172–5
over-deterrence 246
patent holdup 163–4, 166, 167–8, 170, 172–5, 177–9
risk-of-confusion standard (UDRP) 219–20
Rochet, Jean-Charles 125, 133
Rognstad, Ole-Andreas 55–76
Romer, Paul 9
Rose, Carol 38
Rosenthal, Jay 52
Rothman, Jennifer 52
Roy, Alpana 208, 211
royalties
collection clearinghouse 138–9
EU competition law 183, 187–8, 191, 193, 195–6, 200, 202, 203
rate issues, cross-border online licensing models 86–7
see also expectation of benefits
Rysman, Marc 162
safe harbours
Article 102 TFEU 190, 191, 193–4, 197, 200–201, 202
private enforcement of IP law by internet service providers 231, 233–5, 239, 240
Satellite and Cable Directive, EU 69
Schelling, Thomas 34
Schiff, Aaron 117, 118, 138, 140
Schovsbo, Jens 55–76, 94, 186, 206–27
Schultz, Thomas 3, 5, 10, 12, 25, 226, 235
Schweik, Charles 39
Schwemer, Sebastian 77–98
Schott, James 36
self-governance limits, and competition law see EU competition law, standardization rise and limits of self-governance
Seltzer, Wendy 231, 233
Semiconductor Directive, EU 20
Seng, Daniel 230, 242
Seo, Dong Back 150, 151, 161
Shapiro, Carl 37, 116, 117, 121, 193
Sharrock, Lisa 219
Sherif, Mostafa 152
Sherry, Edward 178
Siebrasse, Norman 163
Simcoe, Timothy 156–7, 161, 162
simulcasting or webcasting 82
Six, Benjamin 118
Smits, Jan 3, 18
social capital theory, patent pools 118
social dilemmas of group identity and membership 49–50
Software Directive, EU 100
Solomon, Jason 13
Solum, Lawrence 243–4
source code, open source licences 103
Sparrell, Duncan 152
spillover benefits, knowledge commons 41–2, 45, 48–9
Sprigman, Chris 19, 20, 30
Spruyt, Hendrik 153
Spulber, Daniel 156
stakeholder involvement patent pools and IP coordination models 125–6, 130, 143–4, 146
standard setting organizations (SSOs) and governance problems 155, 178
Stallman, Richard 101–2, 105, 109, 110, 111–12
standard essential patents (SEPs) and dominant position abuse 182–3, 184–5, 187, 189, 191–2, 194, 198–9, 200, 201
governance problems 150–51, 160–62
and injunctive relief 172–4, 182–3, 185–6, 189, 190, 191–7, 199, 200–201, 202–3
validity verification 196–7, 201
standard licences clearinghouse 138, 139
standard setting organizations (SSOs) and governance problems 148–79
asymmetry of information 155
autonomy space 176–7
collective self-governance of shared technology platforms 156–9
competition law practice 160–62
and injunctive relief 172–4, 182–3, 185–6, 189, 190, 191–7, 199, 200–201, 202–3
validity verification 196–7, 201
standard licences clearinghouse 138, 139
structural issues 150–51
expectations of benefits 150–51, 155, 161
FRAND standard essential patents (SEPs) 148–9, 164, 165–6
Free and Open Source Software (FOSS) 159–60, 167
free-ridership risk 158
heterogeneous demands 154, 155
horizontal cooperation 168–71, 176
innovation effects 149, 152, 156, 158, 159–60, 162–3, 171
IPR policy as commons governance 162–5
opportunistic behaviour risks 149, 162, 163–4, 172–5
over-exclusion potential 158, 176
Patent Commons Project 160
patent disclosure policy and licensing commitments 165–8
patent holdup risk 163–4, 166, 167–8, 170, 177–8
patent holdups through breach of FRAND commitments 172–5, 177–9
reputational costs in ‘repeated game’ setting 164
stakeholder interests 155, 178
standard essential patents (SEPs) 150–51, 160–62
standard essential patents (SEPs) and injunctive relief 172–3
standards as public goods 157
technological convergence effects 160–62
and technology development 151–2, 153, 154–5
UNIX standardization attempt 154, 159
standard setting organizations (SSOs) and governance problems, ICT sector 150–59
collective self-governance of shared technology platforms 156–8
information transfer access 153, 157, 158, 162–5
IPR role 159–62
IPR and standards 159–68
open systems concept 153–5, 156–9, 162–3
standard-setting challenges 156–9
standards and standardization 152–6
standardization, and competition law see EU competition law, standardization rise and limits of self-governance
state-enacted laws

Strandburg, Katherine 7, 32
substantive law conflicts, domain names 217–25

sui generis protection of computer programs 99
Sunstein, Cass 11
Suzor, Nicolas 243, 245, 251
Sweden

International Copyright Exchange (ICE) 88–9
one-stop-shop licensing platform 85
Switzerland, Internet Industry Association (simsa), Hosting Code of Conduct 236–7
synthetic biology, patent pools 146–7
technology
biomedical sector and patent clearinghouses 139, 140–2, 143, 144
biotechnology, and patent pools and IP coordination models 123–5
convergence effects, and standard setting organizations (SSOs) 160–62
development, and standard setting organizations (SSOs) 151–2, 153, 154–5
ICT sector, standard setting organizations (SSOs) see standard setting organizations (SSOs) and governance problems, ICT sector
innovation, and private enforcement of IP law by internet service providers 234
neutrality requirement, open source licences 104
protection measures (TPMs), and collective agreements for clearance of copyright 72
synthetic biology 146–7
technology exchange clearinghouse 138
Teece, David 178
Teubner, Gunther 26
third party licensing, patent pools 134–5
litigation options, internet service providers 240–41
Index

rights holders, knowledge commons 50
Tirole, Jean 117, 125, 133, 156
TLDs, country code Top Level Domains (TLDs) (ccTLD) 209, 213–17, 222–5, 226–7
Towse, Ruth 63
Toyokuku, Ronald 158, 170
trademarks as domain names 217–24 hate sites 219, 222–5 tragedy of the anticommons 121–2 Trakman, Leon 4, 207 trans-border uses, representativity problems and collective agreements for clearance of copyright 72–4, 75 transparency, lack of, private enforcement of IP law by internet service providers 231, 235, 236, 242, 244–5, 246, 248 Trumpke, Felix 61 Tsai, Chih-Hong (Henry) 218 Turner, Fred 36 Tyler, Tom 11

Udsen, Henrik 99–114
UK copyright and extended collective licence (ECL) 69–70 one-stop-shop licensing platform 85 Ulrich, Hanns 185, 193 Uniform Domain Name Dispute Resolution Policy (UDRP) 207–8, 209–13, 216, 217, 219–22, 224, 225, 227 Universal Mobile Telecommunications System (UMTS) technology licensing 189 UNIX standardization attempt 154, 159 Updegrove, Andrew 165, 166 Urban, Jennifer 229, 231, 246 US Best Practice Guidelines for Ad Networks 238 Communications Decency Act 229, 232 Copyright Act and computer program protection 100 Copyright Alert System (CAS) 238 copyright and extended collective licence (ECL) 70 copyright law, Best Practices Statements and fair use guide for creative practices 50–52 Digital Millennium Copyright Act (DMCA) 229–30, 232, 233, 235–6, 237–8, 241, 245, 249–50 Global Music Rights (GMR) 87 Internet Policy Task Force 249 ISP safe harbours 231 Manufacturer’s Aircraft Association (MAA) 37–8 Patent and Trademark Office (USPTO) and biotechnology 124–5 Principles of User Generated Content Services 238 private enforcement of IP law by internet service providers 249–50 Semiconductor Chip Protection Act (SCPA) 20 Sewing Machine Combination 37–8 standard essential patents (SEPs) and injunctive relief 172, 175 standard setting organizations (SSOs) assessment 169–71 trademarks as domain names 221

User generated law

In re Negotiated Data Solutions 172
Rambus 170–71
Standard Sanitary Manufacturing Co. v. United States 38
U.S. Philips Corp. v. International Trade Commission 193
Wheaton v. Peters 36
user definition 5–6
user generated law 8–12
model 26–7
see also adoption phase; autonomy spaces; diffusion phase; emergence phase
user innovation 5–8
see also innovation

validity verification, standard essential patents 196–7, 201
Van den Bergh, Roger 11
Van Gompel, Stef 80, 83
Van Overwalle, Geertrui 123
Van Zimmeren, Esther 115–47
Venit, James 185
Verbeure, Birgit 123
visual arts, OnLineArt SCRL 95

Von Hippel, Eric 5, 6, 7–8, 12, 14, 15, 16, 19, 21, 23, 24, 30, 67, 111, 127, 131, 151
Wallis, Roger 63
Walsh, John 125
webcasting 82
Weingast, Barry 32
Weiss, Martin 153, 158, 170
West, Joel 153
Williamson, Oliver 163
WIPO Center’s list of Domain Name Panellists 210–11
WIPO Overview of WIPO Panel Views on Selected UDRP Questions 212–13, 216, 219, 220–22, 227
Wright, Joshua 148, 151, 164, 172, 177

Yanagisawa, Tomoya 116
Yoo, Christopher 156
Yu, Peter 245

Zahle, Henrik 222
Zainol, Zinatul 212