

# Index

---

- 3D printing *see under* T section
- 4D printing *see under* F section
- access to knowledge
  - access and use of digital works
    - distinguished 42–3
  - access principle of proposed new regulatory system 179–80, 190
  - licensing scheme *see* licensing scheme proposal, access to knowledge under
  - restrictions 34–5
    - censorship 12, 21, 67, 80, 175
    - digital rights management *see* digital rights management
    - reproductive flow impeded by 175
      - see also* reproductive flow
  - see also* knowledge
- adaptation right 21
- administrative core of IP law *see* intellectual property (IP) law, administrative core of
- Adorno, Theodor 85
- agency theory 19
- Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS) (WTO) 212–13
- ancient civilisations, creativity in 92
  - China 115
  - Egypt 67–8, 75, 115
  - Greece 68, 69, 75, 115
    - prehistoric art works 59–60, 67
    - Rome 68–9, 75, 104, 115
- Anderson, Chris 30
- Arab Spring uprisings (2011) 25, 115
- Archer, Margaret S. 65
- Aristotle 43, 64, 138, 140
- art works
  - made on electronic devices 180
  - modern art 81, 142–3, 158
  - prehistoric 59–60, 67
  - Renaissance 62, 159
- artists *see* authors
- Ashwin, Peter 6
- assignment of IP rights *see* intellectual property (IP) law, administrative core of
- augmented reality 52, 84, 235
- authors
  - inner creativity of *see* individual creativity and the state, inner creativity
  - labour of, IP law focus on *see* labour theory of IP law
  - publishers, not authors, as subjects of copyright protection 48, 50, 73–5, 89–90
  - re-users of content *see* re-use of works
  - ‘romantic author’ idea 89–90, 135, 136, 156, 169, 191–2
  - technological system to identify, need for 131–2, 225–7
- banking crisis (2007–8) 13, 50, 241

- Barlow, J.P. 14, 127, 168–9, 180
- Bayes, Joseph 105
- Bentham, Jeremy 98, 112
- Bently, Lionel 108
- Berger, Peter L. 3–4, 62, 65
- Berne Convention for the Protection of  
Literary and Artistic Works 1886  
212–13
- Beuys, Joseph 23, 105–6, 158, 172–3,  
179, 186
- Bies, Robert J. 117
- biological systems
- biological processes for creativity  
6–9, 61, 66
  - biosynthetic relationship between  
individuals and the State 37,  
235
  - collaboration and conflict at  
biological level 3, 4–5, 61
  - eyesight 144
  - human reproduction 3, 135, 141
    - genes compared with memes  
61, 139–40
    - mutations 143
  - inner creativity, relationship with  
physicality 35–7, 40, 67
  - prosthetics, 3DP to create 5, 37–8,  
235
  - regulatory interference with
    - medical applications of 4DP  
38–9, 235
    - physical force *see* regulation of  
creativity, by physical  
force
    - regulatory systems and  
biological systems  
relationship 5–6, 39–41
    - restrictions on additions to  
human body 37–8
  - robotics 38, 158–9
- bio-power *see* biological systems,  
regulatory interference with
- Birrell, Augustine 108
- Boyle, James 45, 55, 100–102, 107, 183,  
218
- Brain v Ingledeu Brown Bennison and  
Garrett (A Firm) (No. 3)* 122, 123
- Brandeis, Louis D. 46
- Bronowski, Jacob 24, 35–6, 168, 177,  
230, 247
- capitalism
- alternative social systems 15–16
  - banking crisis (2007–8) 13, 50, 241  
and creativity
    - capitalism dependent on  
creativity 22, 173–5
    - competition/conflict within  
creative processes 48–9,  
167, 177
    - creativity as threat to capitalism  
14–15
    - creativity not dependent on  
capitalism 14, 24, 26,  
174
    - creativity promoted by  
capitalism 159
    - creativity threatened by  
capitalism 10–11,  
17–18, 20–22, 158–9,  
244–5
    - IP law as capitalist system  
13–14, 17, 20–22, 26,  
164–5  
*see also* exploitation focus  
of IP law; property  
framework of IP  
law
  - critiqued by artists 23, 105–6,  
158–9
  - economic reasoning *see* economic  
reasoning
  - exploitation focus of IP law *see*  
exploitation focus of IP law

- 'invisible hand' of the economy
  - concept (Smith) 4, 44, 47–8, 50, 75
  - property rights *see* property;
  - property framework of IP law
- censorship 12, 21, 67, 80, 175
- chained libraries 40, 104
- Changizi, Mark 154–5
- China 12, 16, 115
- Christian Church 12
  - books copied by monks 153, 163
  - chained libraries 40, 104
  - suppression of creativity by 69–71, 115
- circumvention of digital rights
  - management technologies 51, 82, 127, 217
  - see also* digital rights management
- Cloak, F.T. 147–8
- Coase theorem 47
- code *see* technology, code
- commercial fairness *see* economic reasoning, commercial fairness rationale
- commercial focus of IP law *see* exploitation focus of IP law
- Commons concept 45, 89, 101–2, 172, 183
- Communism 12, 15–16
- Condillac, Étienne Bonnot de 19
- conflict
  - collaboration and conflict as human instincts 3–6, 9, 60–61
  - competition/conflict within creative processes 48–9, 167, 177
- convergence, technological 2, 147, 245–6
  - see also* technology
- 'copyfraud' (false assertions of copyright ownership) 119
- Copyright Hub (aka Digital Copyright Exchange) 222–3
- Hooper Feasibility Study Reports on 184, 234
- proposed merger with Copyright Tribunal *see* Digital Copyright Exchange Tribunal (proposed)
- copyright law
  - commercial fairness rationale 124–5
  - 'copyfraud' (false assertions of copyright ownership) 119
  - Copyright, Designs and Patents Act 1988 55–6, 125, 206, 210
  - copyright management information *see* copyright management information
  - derivative works *see* derivative works
  - Digital Economy Act 2010 120, 125–6
  - digital rights management *see* digital rights management
  - enforcement *see* enforcement of IP law
  - exploitation focus of *see* exploitation focus of IP law
  - facts, whether copyrightable 94
  - fair dealing/use doctrines 42, 77, 161
    - private copying 55–6, 118, 121, 200
    - under proposed licensing system 198–9, 205–6, 209, 210
    - see also* licensing scheme proposal
  - regulatory oversight of digital rights management systems 219–21
  - reverse engineering 208–9
  - file sharing regulation *see* file sharing regulation

- history of 21–2, 72–6, 88–90, 92–3, 128
- ancient civilisations *see* ancient civilisations, creativity in
  - chained libraries 40, 104
  - Donaldson v Beckett* (1774) 54, 98, 107
  - exploitation focus of copyright law explained by 163–4
  - Millar v Taylor* (1769) 48, 54, 98, 102–3, 107
  - Stationers Guild 92, 116
  - Statute of Anne 1710 *see* Statute of Anne 1710
- ideas, non-copyrighable 149
- infringement actions *see* enforcement of IP law, infringement actions
- licensing scheme proposal *see* licensing scheme proposal
- ‘literary work’ definition 16
- longevity of, reason for 51–2
- online infringement *see* online copyright infringement
- originality *see* originality standard
- parodies 131, 151, 206, 207
- piracy 21, 25, 63
- plagiarism 68, 69, 115, 181
- as property framework *see* property framework of IP law
- prosthetic limb creation, application to 38
- publishers as subjects of copyright protection 48, 50, 73–5, 89–90
- re-use of works *see* re-use of works
- registration of works not required 89, 228
- restricted to outer, not inner, creativity 40
- see also* individual creativity and the State, inner creativity
  - threats regulation 113, 121–2, 123–7, 129
  - see also* enforcement of IP law, by threats
  - in the US *see* United States, copyright law
  - see also* intellectual property (IP) law
- copyright management information
- content flag use under proposed new regulatory system 131–2, 225–7, 232–3
  - see also* proposed new system for regulating creativity
- digital rights management to protect 38, 82, 119–20, 185
- Copyright Tribunal 27, 221–2
- proposed merger with Copyright Hub *see* Digital Copyright Exchange Tribunal (proposed)
- Cotter, Thomas F. 150
- Creative Commons 186, 229
- creative exchange *see* reproductive flow
- creative space 57–8
- creative hubs 20, 59
  - economic reasoning applied to 76–7, 79
  - errors in replication providing space for creativity 34, 141–3, 144, 153–4, 156
  - historical importance of 58–62
  - and IP law
    - enforcement uncertainty providing space for creativity 55–6, 63, 75, 79–82, 121

- proprietary boundaries set by IP law, rationale for 54–5, 76, 144
  - regulation of *see* regulation of creativity
  - reproductive flow within *see* reproductive flow
  - social conditioning of creativity
    - contemporary ideas about 65–6
    - evolutionary psychology insights 61–3
    - history of ideas about 58, 62, 64–5
  - and technology *see* technology, and creative space
- creativity
  - biological processes for 6–9, 61, 66
  - and capitalism *see* capitalism, and creativity
  - concept 160, 166–7, 175, 187
  - creative space concept *see* creative space
  - ‘destructive’ creativity *see* ‘destructive’ creativity
  - and economic reasoning *see* economic reasoning
  - exploitation confused with 160–62, 167–8, 173–4
  - flow of *see* reproductive flow
  - human instinct for 2, 3, 6, 9–10, 11, 24, 29
  - inner creativity *see* individual creativity and the State, inner creativity
  - labour confused with *see* labour theory of IP law
  - necessity of *see* necessity of creativity
  - regulation of *see* regulation of creativity
  - reproduction confused with 136–7, 142
  - and States *see* individual creativity and the State
  - threats to *see* threats to creativity
  - creativity fund proposal *see* proposed new system for regulating creativity, creativity fund
  - criminal law, regulation of creativity under 27, 32–3, 45
  - copyright piracy 21, 25, 63
  - murder laws 13, 112, 238
  - sexual offence regulation 32–4, 45, 63
  - Crown, regulation of creativity by 67, 69, 71–2
  - da Vinci, Leonardo 62, 159
  - Darcy v Allein* (1602) 96, 98, 100
  - Darwin, Charles 61
  - Dawkins, Richard 24–5, 61, 139–40, 141
  - Declaration of the Independence of Cyberspace (Barlow) 14, 168–9, 180
  - Deleuze, Gilles 14, 143, 156, 168, 169
  - democracy
    - democracy principle of proposed new regulatory system 186, 189–90
    - see also* proposed new system for regulating creativity
    - democratising function of IP law 26, 41, 45, 54–5, 87–8, 170–71, 172
    - ‘idea democracy’ 26, 167, 169–74, 175, 182, 186
  - derivative works
    - fan fiction 21, 56
    - insignificant parts of original works made significant by 103
    - laws restricting, perceived irrationality of 126–7

- parodies 131, 151, 206, 207
- proposed licensing scheme applied to 199, 207
  - see also* licensing scheme proposal
- remixes 26, 103, 126–7, 163, 185, 199, 207
- reproductive flow approach to regulation 150–52
  - see also* proposed new system for regulating creativity; reproductive flow
- sampling 150–51, 199
- unconscious copying 151
- Descartes, René 64, 138
- ‘destructive’ creativity 46–7, 55, 238, 241
  - competition/conflict within creative processes 48–9, 167, 177
  - criminal law regulating *see* criminal law, regulation of creativity under
- Dick, Philip K. 158–9
- Digital Copyright Exchange (aka Copyright Hub) 222–3
  - Hooper Feasibility Study Reports on 184, 234
  - proposed combination with Copyright Tribunal *see* Digital Copyright Exchange Tribunal (proposed)
- Digital Copyright Exchange Tribunal (proposed) 27
  - as a dialogic body 130
  - membership and committee structure 223–4, 240
  - re-use guiding principles, provision of 130–31
  - as regulator of proposed new regulatory system 27, 184, 225, 229–34, 239–40, 242–3
- competition concerns 229, 233, 243
- content flag use 131–2, 225–7, 232–3
- creativity fund 224, 244
- independent appeals body required 230, 232
- licensing scheme, royalty setting 185, 197, 201, 224
- voluntary registration system 195, 196, 228–9
  - see also* licensing scheme proposal; proposed new system for regulating creativity
- digital rights management 82, 96–7, 119–20
  - circumvention of 51, 82, 127, 217
  - copyright management information protection 38, 82, 119–20, 185
  - creative space narrowed by 121, 125–6, 128, 216–17
  - digital watermarking/content flagging of 3DP objects 18, 51, 120, 232–3
  - proposed new system of 130–31, 185, 210, 226–7
    - see also* proposed new system for regulating creativity
  - regulatory oversight of 219–21
  - technological system to identify rights holders, need for 131–2, 225–7
- digital works 25–6
  - access and use distinction 42–3
  - copyright infringement of *see* online copyright infringement
  - file sharing regulation *see* file sharing regulation
  - reproductive acts made overt by technology 136, 180–81

- discursive zone of IP law  
 administrative core of IP law,  
 relationship with 85–6,  
 90–91, 93–4, 98, 107–9, 215  
 alternatives to property framework,  
 discourse on 77–8, 104–10  
 assumptions of 94–5  
 conflation of rights over  
 intangible and physical  
 property 85–6, 94, 95–8,  
 102–3, 165, 171–2  
 discourse undermined by  
 101–3  
 labour as inherent component  
 of IP law *see* labour  
 theory of IP law  
 reproduction, relating to 135–8  
 Digital Copyright Exchange  
 Tribunal as a dialogic body  
 130  
*see also* Digital Copyright  
 Exchange Tribunal  
 (proposed)  
 reproductive flow, discourse on *see*  
 reproductive flow, discourse  
 theoretical rationales  
 Hegel's development of  
 personality theory 98  
 Locke's labour theory of  
 property 89, 98, 103,  
 172  
 Protestant work ethic 26, 82,  
 87, 89, 95, 96, 99, 176  
 utilitarianism 98  
 threats provisions, impact of 114,  
 116–17, 121, 128  
*see also* enforcement of IP law,  
 by threats  
*see also* intellectual property (IP)  
 law  
*Donaldson v Beckett* (1774) 54, 98, 107  
 DRM *see* digital rights management  
 dynamism of law 34–5, 40–41, 46  
 Eccles, John C. 37  
 economic reasoning  
 commercial fairness rationale  
 of copyright law 124–5  
 of unjustified threats provisions  
 122–3, 129  
 as creative force 46–9, 76–7  
 creativity threatened by 49–51  
 exchanged for proprietary reasoning  
 77  
 irrational regulation of creativity  
 exposed by 76–7, 79  
 public's 'veil of ignorance' lifted  
 by 77  
*see also* veil of ignorance  
 concept (Rawls)  
 EFF (Electronic Frontier Foundation)  
 211, 218–19  
 Ehrlich, Eugen 46  
 Elkin-Koren, Niva 169  
 enforcement of IP law  
 infringement actions 97  
 excessive royalties threatening  
 creativity 196  
 labour considerations addressed  
 in 96, 100, 162, 192  
 qualitatively assessed  
 infringement,  
 uncertainties of 192–3,  
 195–6, 204–5  
 quantitative assessment under  
 proposed licensing  
 scheme 195, 196–7,  
 198–9, 200, 203  
 3DP lawsuits *see* 3D printing  
 (3DP), lawsuits  
 regarding  
*see also* licensing scheme  
 proposal

- against online copyright
  - infringement *see* online copyright infringement
- technological innovation, impact on 152–5
- by threats 17–18, 23–4, 111, 113–14
  - copyright threats 113, 121–2, 123–7, 129, 132
  - creativity constrained by 117–20
  - discursive zone of IP law, impact on 114, 116–17, 121, 128
    - see also* discursive zone of IP law
  - proposed new system for regulating threats 127–33
    - see also* proposed new system for regulating creativity
  - role of threats in IP law 112–13
  - role of threats in society 114–17
  - types of 117–19
  - unjustified threats provisions 17–18, 121–3, 128, 132
- uncertainty over providing space for creativity 55–6, 63, 75, 79–82, 121
  - see also* intellectual property (IP) law; regulation of creativity
- entitlement
  - entitlement ideology of IP law 26, 88, 167, 174–5, 186
  - entitlement principle of proposed new regulatory system 186, 190
    - see also* proposed new system for regulating creativity
  - errors in replication providing space for creativity 34, 141–3, 144, 153–4, 156
    - see also* creative space
  - Essay on Human Understanding* (1689) 64, 98, 106–7, 180
    - see also* Locke, John
  - evolutionary psychology 61–3
    - natural selection theory applied to memes 175
  - exchange of ideas *see* reproductive flow
  - exploitation focus of IP law 164–6
    - explanations 166–9
      - conflict 48–9, 167, 177
      - entitlement 26, 88, 167, 174–5, 186
      - ‘idea democracy’ 26, 167, 169–74, 175, 182, 186
      - inertia 167, 178–9
      - merit 26, 89, 167, 175–6, 181, 205
        - see also* labour theory of IP law
      - technological innovation 163–4
    - exploitation confused with creativity 160–62, 167–8, 173–4
    - under proposed new regulatory system
      - see also* proposed new system for regulating creativity
      - makers of works capable of copyright subsistence, system restricted to 182–3, 194, 208, 228–9
      - ‘making’ focus 179–83
      - private use exemption 199–200
      - see also* intellectual property (IP) law; property framework of IP law
  - facts, whether copyrightable 94



- fair dealing/use *see* copyright law, fair dealing/use doctrines
- fairness, commercial *see* economic reasoning, commercial fairness rationale
- fan fiction 21, 56  
*see also* derivative works
- file sharing regulation 12  
3DP files 30–31, 33  
*Grokster* case  
(*Metro-Goldwyn-Mayer Studios, Inc. v Grokster, Ltd* (US)) 52, 152, 153  
impact on file sharing technology 152–3  
large-scale disobedience with 126  
levy system proposals 199  
*Napster* case (*A&M Records, Inc. v Napster, Inc.* (US)) 52–3, 153  
under proposed licensing scheme  
*see* licensing scheme proposal, file sharing regulation under
- Fiske, John 169
- flow of creativity *see* reproductive flow
- Foucault, Michel 6, 35, 36, 40, 66, 128–9, 156, 177
- 4D printing (4DP)  
IP law's property framework subverted by 86  
*see also* property framework of IP law  
medical applications of 38–9, 235  
*see also* 3D printing (3DP)
- France  
art creation fund 186  
copyright legislation (HADOPI 2008) 120  
digital rights management, regulatory oversight of 220
- Frank, Jerome 32, 37, 54, 63
- Free International University for Creativity and Interdisciplinary Research 106
- Friedman, Milton 77
- Fuller, Lon 247
- Galilei, Galileo 71
- Giddens, Anthony 19, 65, 66
- Glorious Revolution (1688) and Whig defence 87, 170
- Grokster* case (*Metro-Goldwyn-Mayer Studios, Inc. v Grokster, Ltd* (US)) 52, 152, 153  
*see also* file sharing regulation
- Gropius, Walter 20, 154, 155
- Guattari, Félix 14, 143, 156, 168, 169
- Habermas, Jürgen 137–8, 139, 145, 147, 156
- hacking of digital rights management technologies 51, 82, 127, 217  
*see also* digital rights management
- Hart, H.L.A. 116, 146
- Heald, Paul J. 118
- Hegel, Georg W.F. 7–8, 43, 98, 180
- Heidegger, Martin 27, 230, 237
- Helberger, Natali 55
- history of IP law 236–7  
copyright law *see* copyright law, history of  
economic rationale, evolution of 21–2, 46–9  
patent law *see* patent law, history of  
property framework, emergence of 41–2, 88, 108  
*see also* intellectual property (IP) law
- Hockney, David 180
- Hohfeld, Wesley N. 23
- Hooper, Richard 184, 234
- hubs, creative 20, 59
- Hugenholtz, P. Bernt 55

- Hughes, Justin 107
- human body *see* biological systems
- human instincts
- collaboration and conflict 3–6, 9, 60–61
  - creativity 2, 3, 6, 9–10, 11, 24, 29
  - sex *see* biological systems, human reproduction
- Hume, David 19, 138
- ideal system for regulating creativity  
*see* proposed new system for regulating creativity
- ideas
- combining ideas as essence of creativity 160, 166–7, 175
  - copyright protection for excluded 149
  - ‘idea democracy’ 26, 167, 169–74, 175, 182, 186
  - legal definition of 149
  - Locke’s views on 7, 64, 107, 138–9
  - Plato’s and Aristotle’s views on 43, 70, 138, 140
  - reproduction of 136, 138–9  
via memes *see* memes
  - see also* knowledge
- individual creativity and the State
- 19–20, 23, 29–30
  - biological State concept 39–41
  - bio-power *see* biological systems, regulatory interference with
  - biosynthetic relationship 37, 235
  - Commons of dialogue between individuals and the State 45–6
  - creativity as human instinct 2, 3, 6, 9–10, 11, 24, 29
  - discursive zone between individuals and the State *see* discursive zone of IP law
  - enforcement of IP law *see* enforcement of IP law
  - i-memes and m-memes distinguished 147–8
  - inner creativity
    - distinguished from outer creativity 20, 29, 30–32, 42
    - impeded by access restrictions 42–3
    - indirect regulation of 33–5, 39, 50–51
    - physicality, relationship with 35–7, 40, 67
    - property, relationship with 54–5
    - re-use of works as expression of 73, 169, 191–3
    - regulation currently not focused on 29–30, 40
    - regulation ideally to accord with 21, 30, 35, 126–7, 179
    - see also* proposed new system for regulating creativity of States 44, 46, 55  - social conditioning of creativity  
*see* creative space, social conditioning of creativity
  - State dependency on creativity 15, 22, 31, 238, 241, 246–7
  - power relations between States and individuals 128–9
  - State rationality threatened by creativity regulation *see* rationality of States, perceived
  - State interests promoted by IP law 66–76
  - law as reproductive force 145–7, 148

- see also* regulation of creativity;  
States
- inertia impeding reproductive flow 167,  
178–9  
*see also* exploitation focus of IP  
law; reproductive flow
- information flow 24, 140, 236  
*see also* reproductive flow
- infringement of IP actions *see*  
enforcement of IP law,  
infringement actions
- inner creativity *see* individual creativity  
and the State, inner creativity
- intellectual property (IP) law 66–7, 135  
administrative core of 90–93  
discursive zone, relationship  
with 85–6, 90–91, 93–4,  
98, 107–9, 215  
balance of collaboration and  
competition, IP law derived  
from 3  
as capitalist system 13–14, 17,  
20–22, 26, 164–5  
*see also* capitalism; exploitation  
focus of IP law; property  
framework of IP law  
copyright law *see* copyright law  
and creative space *see* creative  
space, and IP law  
discourse on *see* discursive zone of  
IP law  
economic rationale  
critique of 49–51  
evolution of 21–2, 46–9  
enforcement of *see* enforcement of  
IP law  
history of *see* history of IP law  
infringement actions *see*  
enforcement of IP law,  
infringement actions  
labour theory *see* labour theory of  
IP law  
longevity of, reason for 51–2  
patent law *see* patent law  
private relations under 23  
property framework of *see* property  
framework of IP law  
proposed new system *see* proposed  
new system for regulating  
creativity  
as reproductive force 145–7, 148  
State interests promoted by 66–76  
theories of *see* discursive zone of  
IP law
- international law compatibility of  
proposed licensing scheme  
212–13  
*see also* licensing scheme proposal
- internet  
Declaration of the Independence of  
Cyberspace (Barlow) 14,  
168–9, 180  
online copyright infringement *see*  
online copyright infringement  
online licensing *see* online licensing  
reproductive flow facilitated by 25,  
173  
*see also* reproductive flow  
social media 26, 27, 121, 131
- inventors *see* authors
- IP law *see* intellectual property (IP) law
- Johns, Adrian 108
- Kant, Immanuel 8, 64–5, 180
- Kaplan, Benjamin 48
- Keynes, Maynard 77
- Kitch, Edmund W. 238
- knowledge  
access to *see* access to knowledge  
Foucault's views on 6  
Kant's views on 8  
knowledge-based economy 17, 124

- knowledge-making, regulation of  
     creativity for 126, 136  
     *see also* proposed new system  
         for regulating creativity  
 Locke's theory of *see* Locke, John,  
     knowledge theory  
 Plato's views on 31, 70  
 public and private knowledge  
     distinguished 9  
 scientific knowledge 76, 142  
     *see also* ideas  
 Kuhn, Thomas 139
- labour theory of IP law 52–4, 79–82,  
     99–101  
     infringement actions, labour  
         considerations addressed in  
         96, 100, 162, 192  
     labour-saving technologies, impact  
         of 82  
     Locke's labour theory of property  
         89, 98, 103, 172  
     meritocratic ideology 26, 89, 167,  
         175–6, 181, 205  
     originality seen as synonymous with  
         labour 79–80, 89, 162  
     Protestant work ethic 26, 82, 87, 89,  
         95, 96, 99, 176  
     ‘romantic author’ idea contrasted  
         with 89–90  
     ‘works’ term preferred over  
         ‘creative process’ 172–3,  
         179  
     *see also* intellectual property (IP)  
         law  
 Landes, William 49, 238  
 law  
     as a creative force 34–5, 40–41, 46,  
         78–9  
     as a reproductive force 145–7  
 Leibniz, Gottfried 19  
 Leonardo da Vinci 62, 159
- Lessig, Lawrence 20, 42, 151  
 licensing scheme proposal 27, 162, 185  
     access to knowledge under  
         contracting out of scheme  
             prohibited 209–10, 227  
     digital rights management  
         *see* proposed new  
         system for regulating  
         creativity, digital rights  
         management system  
     reverse engineering of code  
         208–9  
     statements of principle,  
         proposed 210–11, 243  
     advantages of 197–8  
         compared with current system  
             243–6  
         compared with extending the  
         permitted acts under  
         current system 204–5  
     compulsory licensing where works  
         are quantitatively similar and  
         exploited 197–9  
     derivative works, application to  
         199, 207  
     fair dealing/use doctrines under  
         198–9, 205–6, 209, 210  
     file sharing regulation under  
         *see also* file sharing regulation  
         deterrence element 200–201  
         private use exemption 199–200  
         royalties paid by person  
             receiving content 202–3  
         royalty rate calculations 201–2  
     international law compatibility  
         212–13  
     makers of works capable of  
         copyright subsistence,  
         scheme restricted to 182–3,  
         208, 228–9  
     moral rights under 206–7  
     patents, application to 211

- quantitative assessments of  
 infringement 195, 196–7,  
 198–9, 200, 203
- royalties under  
 paid by person receiving  
 content 202–3  
 royalty rate calculations 201–2,  
 203  
 set by Digital Copyright  
 Exchange Tribunal 185,  
 197, 201, 224  
*see also* Digital Copyright  
 Exchange Tribunal  
 (proposed)
- 3DP projects, application to 199,  
 203, 243–4
- US adoption, constitutional reform  
 required 211–12
- voluntary registration system 195,  
 196, 228–9  
*see also* proposed new system for  
 regulating creativity
- licensing schemes, existing  
 compulsory licensing 197, 198  
 Copyright Hub *see* Copyright  
 Hub (aka Digital Copyright  
 Exchange)  
 Creative Commons 186, 229  
 GNU General Public License for  
 open source software 210,  
 229  
 online licensing *see* online licensing
- ‘living law’ theory 17, 46, 78
- Locke, John 7, 45, 138, 154  
 knowledge theory 19, 42, 66, 136,  
 138–9, 172, 177  
*Essay on Human  
 Understanding* (1689)  
 on 64, 98, 106–7, 180  
 labour theory of property 89, 98,  
 103, 172
- Luckmann, Thomas 3–4, 62, 65
- Luhmann, Niklas 65
- machinic technology *see* technology
- makers *see* authors
- ‘making’ focus of proposed new  
 regulatory system 179–83  
*see also* proposed new system  
 for regulating creativity,  
 creativity focus of
- Marcuse, Herbert 155
- Marx, Karl 159
- Mazzone, Jason 119
- memes 24–5, 139–40, 141, 145–6  
 in 3DP (popularity of printing bottle  
 openers) 148–9  
 genes compared with 61, 139–40  
 i-memes and m-memes  
 distinguished 147–8  
 natural selection theory applied to  
 175  
*see also* ideas; reproductive flow
- Merges, Robert P. 49
- merit  
 merit principle of proposed new  
 regulatory system 186, 190  
*see also* proposed new system  
 for regulating creativity
- meritocratic ideology of IP law 26,  
 89, 167, 175–6, 181, 205
- Michelangelo di Lodovico Buonarroti  
 Simoni 62, 159  
 3D scans of statues by, whether  
 copyright infringement 192
- Millar v Taylor* (1769) 48, 54, 98,  
 102–3, 107
- moral rights under proposed licensing  
 scheme 206–7  
*see also* licensing scheme proposal
- Napster* case (*A&M Records, Inc. v  
 Napster, Inc. (US)*) 52–3, 153  
*see also* file sharing regulation

- necessity of creativity
- confused with exploitation 160–62, 167–8, 173–4
  - as human instinct 2, 3, 6, 9–10, 11, 24, 29
  - as principle of proposed new regulatory system 125–7, 130, 186, 187, 211
    - see also* proposed new system for regulating creativity
- Nelson, Richard R. 49
- Newton, Sir Isaac 64
- Newzbin case (Twentieth Century Fox Film Corp v Newzbin Ltd)* 152, 153
  - see also* online copyright infringement
- Nietzsche, Friedrich 177, 238
  - Platonic v Nietzschean creativity 19, 60–61
- 1984* (George Orwell novel) 11–12
- Nozick, Robert 103
- online copyright infringement
  - file sharing regulation *see* file sharing regulation
  - laws imposing duties on ISPs 120–21, 125–6
  - levy system proposals 199
  - Newzbin case (Twentieth Century Fox Film Corp v Newzbin Ltd)* 152, 153
    - see also* enforcement of IP law, infringement actions
- online licensing 173
  - commercial schemes 229, 243
  - oversight by Copyright Hub and Copyright Tribunal 222–3
  - YouTube and Spotify's schemes 26, 27
- open source software, GNU General Public Licence for 38, 210, 229
- originality standard
  - Infopaq* ruling interpretation (*Infopaq International A/S v Danske Dagblades Forening (C-5/08)* (ECJ)) 204–5
  - labour, originality seen as synonymous with 79–80, 89, 162
    - see also* labour theory of IP law
  - in the US 80
    - see also* copyright law
- Orwell, George 11–12
- outer creativity
  - distinguished from inner creativity 20, 29, 30–32, 42
  - IP law focused on 29–30, 40
    - see also* individual creativity and the State, inner creativity
- parodies 131, 151, 206, 207
  - see also* derivative works
- Parsons, Talcott 19
- patent law
  - enforcement *see* enforcement of IP law
  - history of 67, 74, 88
    - Darcy v Allein* (1602) 96, 98, 100
  - infringement by 'variant' production 149–50
  - labour as inherent component of 52
    - see also* labour theory of IP law
  - patents protecting 3D printers 37–8, 96, 211
  - proposed licensing scheme applied to patents 211
    - see also* licensing scheme proposal
  - unjustified threats provision (Patents Act 1977 s.70) 122
    - see also* intellectual property (IP) law

- peer-to-peer (P2P) file sharing regulation  
*see* file sharing regulation
- permitted acts *see* copyright law, fair dealing/use doctrines
- piracy, copyright 21, 25, 63
- plagiarism 68, 69, 115, 181
- Plato 31, 43, 64, 70, 138, 140  
 Platonic v Nietzschean creativity 19, 60–61
- Popper, Karl 37
- Posner, Richard A. 47, 49, 77, 238
- printing press, invention of 71, 75, 88, 163
- private copying 55–6, 118, 121, 200
- private use exemption under proposed new regulatory system 199–200  
*see also* proposed new system for regulating creativity
- property  
 concept  
 Commons concept 45, 89, 101–2, 172, 183  
 linked to individual freedom and creativity 87–8  
 physical, legal and semantic forms distinguished 41–2, 53, 104–5  
 economic reasoning replacing proprietary reasoning 77  
 property framework of IP law *see* property framework of IP law  
 proprietary discourse of IP law *see* discursive zone of IP law  
 property framework of IP law 84–5, 164–6  
 alternatives to  
 discourse on 77–8, 104–10  
 reproductive flow approach 143–4, 156
- assignment, sale or licensing of rights *see* intellectual property (IP) law, administrative core of
- creativity threatened by 11, 17–18, 20–22, 42–3, 108–9, 166, 237
- defended by larger 3DP companies 84
- emergence of 41–2, 88, 108
- exploitation focus of IP law *see* exploitation focus of IP law
- rationale 76, 144  
 conflation of rights over intangible and physical property 85–6, 94, 95–8, 102–3, 165, 171–2  
 democratising function 26, 41, 45, 54–5, 87–8, 170–71, 172  
 subverted by technology 172  
 3DP and 4DP 86, 105  
*see also* intellectual property (IP) law
- proposed new system for regulating creativity 12–13, 15–16, 18, 181–7, 242–3
- challenges facing 214
- creativity focus of 245–7  
 creative space provision *see* creative space  
 inner creativity of individuals, system in accordance with 21, 30, 35, 126–7, 179  
 knowledge-making aim 126, 136  
 ‘making’ processes distinguished from exploitation 179–83  
 necessity of creativity principle 125–7, 130, 186, 187, 211

- ontological correctness 15, 18, 22–4, 27
  - re-use of works acknowledged as creativity 191–3
  - wider implications of 240–42
- creativity fund 183–5, 186–90, 193–4, 224
  - applied to 3DP projects 187, 244
  - makers of works capable of copyright subsistence, fund restricted to 182–3, 194
- Digital Copyright Exchange Tribunal proposed as regulator *see* Digital Copyright Exchange Tribunal (proposed)
- digital rights management system of 130–31, 185, 210, 226–7
- file sharing regulation under *see* licensing scheme proposal, file sharing regulation under
- financing of 184, 188–9
- licensing scheme proposal *see* licensing scheme proposal
- potential flaws of 194–5, 198, 200–201
- principles
  - access to knowledge 179–80, 190
    - see also* licensing scheme proposal, access to knowledge under
  - democracy 186, 189–90
  - entitlement 186, 190
  - merit 186, 190
  - necessity of creativity 125–7, 130, 186, 187, 211
  - statements of principle, proposed 210–11, 243
  - reproductive flow approach 57, 150–52, 154–7, 176
    - see also* reproductive flow
  - technological regulation 195, 196–7, 198
    - concerns about 215–18, 229–30
    - content flag use 131–2, 225–7, 232–3
    - threats regulation, proposed new system 127–33
      - see also* enforcement of IP, by threats
      - see also* regulation of creativity
  - prosthetics, 3DP to create 5, 37–8, 235
  - Protestant Reformation 71, 72
  - Protestant work ethic 26, 82, 87, 89, 95, 96, 99, 176
    - see also* discursive zone of IP law; labour theory of IP law
  - public domain
    - ‘copyfraud’ (assertions of copyright over public domain works) 119
    - 3D scans of public domain objects 84, 94, 112–13, 192
  - publishers as subjects of copyright protection 48, 50, 73–5, 89–90
  - ‘push-button order’ 24, 35–7, 50, 168, 177, 179, 230, 247
- Rahmatian, Andreas 237
- Raphael 62
- rationality of States, perceived 9, 21, 24, 40, 44
  - ‘safety valve’ protecting 55–6, 83
  - threatened by regulation of creativity 25, 31, 51–5
  - derivative works, laws restricting 126–7
  - economic reasoning exposing irrationalities 76–7, 79



- see also* individual creativity and the State
- Rawls, John 40  
 veil of ignorance concept *see* veil of ignorance concept (Rawls)
- re-use of works  
 derivative works *see* derivative works  
 as expression of inner creativity 73, 169, 191–3  
 as fair dealing/use *see* copyright law, fair dealing/use doctrines  
 proposed licensing scheme for *see* licensing scheme proposal  
 re-users under-represented by lobby groups 211, 218–19  
 restrictions on 12, 25, 51, 128  
*see also* intellectual property (IP) law  
 derivative works impeded by 126–7  
 file sharing regulation *see* file sharing regulation  
 guiding principles on, need for 130–31  
 3DP works *see* 3D printing (3DP)
- regulation of creativity  
 bio-power *see* biological systems, regulatory interference with  
 creativity threatened by *see* threats to creativity  
 criminal law *see* criminal law, regulation of creativity under  
 future of 238–40  
*see also* proposed new system for regulating creativity  
 indirect regulation of inner creativity 33–5, 39, 50–51  
 IP law *see* intellectual property (IP) law
- law as a creative force 34–5, 40–41, 46, 78–9  
 law as a reproductive force 145–7  
 mind control concern 11–12, 36–7  
 by physical force 20, 70–71, 115  
 ‘push-button order’ 24, 35–7, 50, 168, 177, 179, 230, 247  
 proposed new system *see* proposed new system for regulating creativity  
 rationality of *see* rationality of States, perceived  
 social harms of unrestricted creativity 12–13, 32–3  
 by technology *see* technology, regulation of creativity by  
 by threats *see* enforcement of IP law, by threats  
*see also* individual creativity and the State
- Reich, Wilhelm 169
- remixes 26, 103, 126–7, 163, 185, 207  
*see also* derivative works
- reproductive flow 24–5, 134  
 concept 141–5  
 theoretical interpretations 169
- discourse  
*see also* discursive zone of IP law  
 assumptions about reproduction 135–8  
 discursive zone reliant on replications and errors 156  
 on law’s effect on reproductive flow 137–8  
 mechanism for this discourse, need for 144–5  
 errors in replication providing space for creativity 34, 141–3, 144, 153–4, 156

- ideas, flows of 136, 138–9
  - historical analysis of 69–71
  - ‘liquid architecture’ concept 173
  - via memes *see* memes
- impediments to
  - access restrictions 175
  - inertia 167, 178–9
  - proprietary boundaries of IP law 76, 170, 171
- information flow 24, 140, 236
- law as a reproductive force 145–7
- reproduction confused with
  - creativity 136–7, 142
- reproductive flow approach to
  - creativity regulation 57, 150–52, 154–7, 176
  - see also* proposed new system for regulating creativity
- technological innovation, impact of IP enforcement on 152–5
  - see also* creativity
- reproductive technology *see* technology
- reverse engineering of code 208–9
- rights holders
  - authors *see* authors
  - publishers 48, 50, 73–5, 89–90
  - technological system to identify, need for 131–2, 225–7
- robotics 38, 158–9
- ‘romantic author’ idea 89–90, 135, 136, 156, 169, 191–2
  - see also* authors
- Rothko, Mark 143, 144, 145
- royalties
  - excessive royalties as threat creativity 196
  - under proposed licensing scheme *see* licensing scheme proposal, royalties under
- Rubenson, Daniel L. 49
- Runco, Mark A. 49
- sale of IP rights *see* intellectual property (IP) law, administrative core of sampling 150–51, 199
  - see also* derivative works
- Schumpeter, Joseph 159
- scientific knowledge 76, 142
  - see also* knowledge
- Second Treatise of Government* (1690) 98, 106–7
  - see also* Locke, John
- Shapiro, Debra 117
- Sherman, Brad 108
- Smith, Adam 4, 44, 47–8, 50, 75
- social media 26, 27, 121, 131
- social organisation
  - capitalism *see* capitalism
  - collaboration and conflict at social level 3–5, 60–61
  - creativity as socially binding force 19–20
  - ‘grund norm’ development 62–3
  - non-capitalist systems of 15–16
  - social conditioning of creativity *see* creative space, social conditioning of creativity
  - social harms of unrestricted creativity 12–13, 32–3
- social threefolding theory (Steiner) 105, 179, 185–6
- space, creative *see* creative space
- Spotify licensing system 26, 27
- States
  - balance of collaboration and conflict, States derived from 4
  - biological State concept 39–41
  - individual creativity, relationship with *see* individual creativity and the State
  - inner creativity of 44, 46, 55
  - rationality of *see* rationality of States, perceived

- social organisation of *see* social organisation
- Stationers Guild 92, 116
  - see also* copyright law, history of
- Statute of Anne 1710 21, 52, 123
  - economic reasoning lacking from 48
  - long title of 164
  - property rights protected by 92, 97, 165
  - publishers' rights protected by 73–4, 75, 89–90
  - see also* copyright law, history of
  - Steiner, Rudolf 23, 105, 159, 170, 179
  - structuration theory 19
- tabula rasa* theory 58, 65
- technology
  - code 36
    - exchange of 25
    - open source software 38, 210
    - reverse engineering of 208–9
  - convergence of 2, 147, 245–6
  - and creative space
    - see also* creative space
    - errors in replication providing space for creativity 34, 141–3, 153–4
    - space narrowed by 121, 125–6, 128, 230
    - space widened by 77–8, 79, 82–3, 125, 237
  - innovation
    - exploitation focus of IP law explained by 163–4
    - impact of IP enforcement on 152–5
  - printing press, invention of 71, 75, 88, 163
  - property framework of IP law
    - subverted by *see* property framework of IP law, subverted by technology
  - public's 'veil of ignorance' lifted by 25, 193, 199, 230
    - see also* veil of ignorance concept (Rawls)
  - regulation of creativity by 26, 27–8
    - digital rights management *see* digital rights management
    - under proposed new regulatory system *see* proposed new system for regulating creativity, technological regulation
    - 'push-button order' 24, 35–7, 50, 168, 177, 179, 230, 247
    - technological bureaucracy 215–17, 237
  - reproductive acts made overt by 136, 180–81
  - theories of IP law *see* discursive zone of IP law
  - thoughtcrime (concept from *1984* by George Orwell) 11–12
  - thoughts *see* ideas
  - threats of IP infringement actions *see* enforcement of IP law, by threats
  - threats to creativity
    - capitalism 10–11, 17–18, 20–22, 158–9, 244–5
    - see also* property framework of IP law, creativity threatened by
    - economic reasoning 49–51
    - excessive royalties 196

- laws restricting derivative works 126–7
- threats provisions of IP law 117–20
  - see also* enforcement of IP law, by threats
- 3D printing (3DP)
  - applications
    - bottle opener creation 148–9
    - parodic works creation 131
    - prosthetic limb creation 5, 37–8, 235
  - 3D models of fictional characters 131, 243–4
  - 3D scans of public domain objects 84, 94, 112–13, 192
  - weapon creation 30–31, 32, 33
- ‘copyfraud’ (false assertions of copyright ownership) 119
- digital watermarking/content
  - flagging of 3DP objects 18, 51, 120, 232–3
  - see also* digital rights management
- errors in replication providing space for creativity 34, 141
- as evolution of existing creative technologies 2
- IP law’s property framework
  - see also* property framework of IP law
  - defended by larger 3DP companies 84
  - subverted by 3DP and 4DP 86, 105
- lawsuits regarding 17, 26, 54, 67
  - Stratasy v Afinia* 96
  - threats of lawsuits
    - commonplace 112–13
- ‘literaturisation’ of everyday objects
  - by 16, 162
- patents protecting 3D printers 37–8, 96, 211
- proposed new regulatory system
  - applied to
    - see also* proposed new system for regulating creativity
  - creativity fund 187, 244
  - licensing scheme 199, 203, 243–4
- as revolutionary technology, claims about 1
- sharing of 3DP files, regulation of 30–31, 33
  - see also* file sharing regulation
  - see also* 4D printing (4DP)
- TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (WTO)) 212–13
- unconscious copying 151
  - see also* derivative works
- Unger, Roberto Mangabeira 114
- United States
  - copyright law
    - compulsory licensing 198
    - copyright and competition law relationship 124–5
    - Digital Millennium Copyright Act 1998 42, 125, 219–20
    - digital rights management, regulatory oversight of 219–20
    - fair use doctrine 42, 77, 161, 206, 209, 219–20
    - file sharing cases 52–3
    - history of 74
    - ideas excluded from copyright protection, rationale for 149
    - originality standard 80

- statement of principle of 210, 243
- financial investment by rights holders, weight given to 100
- proposed licensing scheme, constitutional reform required for US adoption 211–12
  - see also* licensing scheme proposal
- utilitarian rationale of IP law 98
- unjustified threats of IP infringement actions 17–18, 121–3, 128, 132
  - see also* enforcement of IP law, by threats
- use of works
  - access and use of digital works distinction 42–3
  - re-use of works *see* re-use of works
- utilitarian rationale of IP law 98
- Valenti, Jack 94
- veil of ignorance concept (Rawls) 40
  - inertia within regulation of creativity, veil associated with 178
  - veil lifted by economic reasoning 77
  - veil lifted by technology 25, 193, 199, 230
- Warhol, Andy 142, 158
- watermarking of 3DP objects 18, 51, 120
  - see also* digital rights management
- Watson, Peter 65
- weapons, 3DP to create 30–31, 32, 33
- Weber, Max 40, 215, 229, 239
- Woodmansee, Martha 169
- YouTube 26, 27, 131
- Zemer, Lior 107

