Index
audiovisual works, protection of multimedia products as 185–206
definition of multimedia products 186–8
multimedia works as audiovisual works 188–206
auf der Maur, Rolf 332

Australia
and broadcasters’ rights 490
legislation for on-line teaching in 376, 382
protection of factual information in 120
protection of folklore in 212, 215, 217
technological measures and copyright exceptions in 428, 429

Austria
collective administration of copyright in 263, 264
copyright in collective works in 127
solving disputes regarding technological measures and exceptions in 443

Auteri, P. 309
author’s intellectual creation 27, 121, 123, 125–6, 167, 337
author’s legitimate interests, no unreasonable prejudice to 74–5, 233, 244, 250, 344, 347–9, 387–8
author’s rights
constitutional basis for 361–5
European view on 19–26, 27, 339, 362–4
see also droit d’auteur
as human rights 357–61
ownership of literary copyright in text 10–11
protection against buy-outs 262–3
and public domain in early British, French and US copyright law 133–55
relinquishment of 169–70, 178
transition from publisher’s right to, in Britain 52–60, 81, 136–44
see also author’s intellectual creation;
author’s legitimate interests, no unreasonable prejudice to;
labour-based rights, Lockean;
moral rights
authorisation 465–6

Autospin Oil Seals Ltd v Beehive Spinning 120, 127
Ayer, A.J. 26

Bach v Longman 9, 138
ballets 13–14
Baltic States
alternative dispute resolution in 436–9
and broadcasters’ rights 492–3
Bar Council 422
Barlow, John Perry 454
Barszewski, M. 456
basic goods 25, 26
Basque, G. 319
battle of the booksellers 142
Baxter, Andrew 305
Bechtold, Rainer 234, 318
Becker, Jürgen 265
Beckford v Hood 140
Beier, F. 86, 284
Belgacom v Kapitol Trading 95
Belgian Copyright Act (1994, amended 2005) 101, 444
Belgium
quotation exception in 397
solving disputes regarding technological measures and exceptions in 444
teaching exception in 390, 391, 392–3
unfair competition law in 92–5
choice between infringement actions and 106–7
cumulation of infringement actions and 100–103, 107
Bell, Tom 54
Benabou, V.-L. 177–8
Benkerl, Y. 133, 150, 162, 309, 310, 311, 321
Bentham, Jeremy 67
Bently, L. 50, 55, 66, 86, 125, 126, 137, 316–17, 337, 338, 339
Bercovitz, Rodrigo 397
Berenboom, A. 193, 195–6
Berger, C. 345, 346
Bergström, Gunilla 370–71
Berlin Act of Berne (1908) 8
Berne Convention for the Protection of Literary and Artistic Works
compliance of governmentally administered reward system with 302–4
duration of copyright under 10
and idea/expression dichotomy 167, 174
member countries of 12–13
and moral rights 44, 45, 69, 338, 495
national treatment obligation in 39, 40, 41, 397–8
official texts excluded from copyright protection in 166
and protection of compilations of facts 112–13
and protection of folklore 207–9, 226, 228
and protection of point-to-mass communication 288
quotation exception in 395–8
scope of protection 42, 484, 485
Stockholm revision (1976) 377, 378, 397, 396
substantive provisions incorporated into TRIPs 78
teaching exception in 373, 377–80, 399
territoriality concept implied in 460, 461
WCT and WPPT designed to complement 289
wording used in 361
and works using cinematography 194, 195

see also Berne Convention Implementation Act (BCIA) (1988); three-step test
Bertrand, A. 87, 91, 96, 97, 202
Besek, June 319, 427
Besen, S.M. 265, 266, 268, 284–5
best efforts provision 466
betting cases, UK 116–18, 124, 126, 127, 128, 129
Bettinger, T. 467
Beveridge, Albert J. 152, 153
Beyleved, D. 22, 23, 25
Bhagwati, Jagdish 65, 77, 81
Biotrading & Financing OY v Biohit Ltd 32, 33
Birnack, M.D. 38, 363, 364
Birrell, Augustine 142
Bitan, H. 191
Blackstone, William 142, 155
Blackwell v Harper 140
Blagden, Cyprian 136
blasphemous and seditious material 6
Blaug, Mark 273
block exemptions 469–74
BMI 268, 284
Bodewig, Theo 264, 334
Bogsche, Arpad 510
Bogsche theory 258
Boileau Despréaux, Nicolas 143
Bolivia 510
Bonham-Carter, Victor 143
Bonneville International Corp. v Peters 292
Bookmakers' Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd (Greyhound Services) 111, 117–18, 119, 124
books 13, 138, 149, 285–6, 299, 301, 323, 324
textbooks 393, 394
Booy, A. 85
Borgh, M. 309
Bornkamm, Joachim 343, 344, 346
Bourget, Paul 284
Boyle, James 70, 133, 134, 161
Branstetter, C. 319, 321
Braun, Nora 426
Brazil
and broadcasters’ rights 490, 491, 492, 507, 508–9, 510
and WIPO’s role 510
breach requirement 88, 89, 96
Brett, H. 85
Bridgeman Art Library v Corel Corp. 39–41, 43, 44
Brinkof, Jan J. 340
British Horseracing Board Ltd v William Hill Organisation Ltd
copyright in database? 1, 19, 27, 110, 120, 125, 130
sui generis right and 18–19, 109–10,
broadcasting organisations, protection of
497–500, 507
international instruments 487–9
national legislation 490–91
WIPO negotiations on 483–513
background to 483–7
future prospects 512–13
work of the SCCR 487–512
broadcasts
duration of protection 10, 488, 489,
exceptions and limitations relating to
fixation and distribution/reproduction
of fixations see fixation
freedom of expression and 370–71
freedom to provide services and
making available/on demand right
penalties for offences relating to 416
personal online video recorders and
point-to-mass 303
protection of pre-broadcast signal
rebroadcasting/retransmission of 488,
as secondary exploitation 285, 290
see also ‘broadcasting’, definitions of;
broadcasting organisations,
protection of; cable transmissions; satellite broadcasts; simulcasting;
webcasting
Brooks v Cock 140
Brown, H.J. 431, 432
Brownsword, R. 22, 25
Bruguiere, J.-M. 177
Brunet, C. 61
Brüning, A. 100
Brussels Act (1948) 377, 378, 379
Index

Carmichael, C. 38
Cartan v Bowles 138
Cartagena Agreement 490
Cartesian philosophy 21
cartoon films 197
Cary v Faden 138
Cary v Longman and Rees 138
Casari c Arborescence France 206
Casellati, Alvise 388
causal link requirement 88, 90
CB-Infobank 246, 363
CBS v Anstrad 465
CCC Info. Servs. Inc. v Maclean Hunter
Market Reports 17
CCH Canadian Ltd v Law Society of
Upper Canada 63, 64, 66, 68, 120
CD-ROM 192–3, 204, 206
censorship 5–6, 52, 54, 71, 145, 305,
404, 405, 407
certain special cases 233, 250, 344–5,
385–6
Chander, A. 133, 168
Chardeaux, M.-A. 173, 180
Chartered Institute of Arbitrators 433
Chartier, Roger 54
charts 149
Chile, and broadcasters’ rights 490, 492,
507, 509, 513
China, and broadcasters’ rights 490
Chira-alphakul, Hassana 403, 418, 419
Choe, J. 200
Choisy, S. 161, 177
Christian, Edward 144
cinematography 194, 195, 197
civil law 47, 69, 86, 88, 89, 93, 96
Civil Procedure Code 101, 103, 104
Civil Society Coalition (CSC) 511–12
Clark, Charles 427
classrooms 393, 394
Clauss, R. 96
Clayton v Stone 150
Clément, Paul 148
Clément-Fontaine, M. 170
Clement v Golding 138
Clintt Administration 485
Cocteau, Jean 309
Code Civil 50, 88, 166
codes and ciphers 13
Coditel SA v Ciné Vog Films SA 469,
475, 480–81
Cohen, Julie E. 172, 284, 291, 301, 427
Coleman v Wathen 141
collective management
competition in the field of 255–82,
452
collecting societies and monopoly
power 263–8
competition in favour of right-
holders or consumers? 268–73
conclusions 280–82
creative competition and Europe’s
competitiveness in
international markets 278–80
creative competition in the digital
environment 275–8
legislative background in Europe
255–9, 295–6
preferring creative competition to
allocative efficiency 273–5
rationale for collective
administration in copyright
markets 259–63
future of, in a digital environment
283–314
digital rights management (DRM)
and 283, 297–301, 307, 313
European Union’s position on
293–7, 306–8
from the long route to the short
route 308–14
governmentally-administered
reward system and 283,
301–6, 313
history of CRMOS 284–6
interim assessment of 291–3
novel features of the digital age
and 286–91
policy in 456
and quality 457–9
territorial basis of 464
collective works 127
Collins, A.S. 143
Colombia, and broadcasters’ rights 507
Comédie Française 145
commercial users option 73
common law copyright
and freedom of opinion 316
and moral rights 45, 69–70, 78
philosophical underpinning of 27(337)
common law copyright (cont.):
    pre-existing before statutory rights 81, 137, 149, 151–3
    and restored/reconstituted works 48
    statutory law superseding? 7, 57–60, 139–40, 142
    in the US 7, 150–54
community ownership 216
Company of Stationers v Seymour 135
comparative advertising 84
compensatory liability rule 302
competing undertakings 470–72
competition, regulating by way of copyrights limitations and exceptions 232–54
competition in the field of value-added services 238–42
information value-added services 239–40
need for competition 240–42
conclusions 251–4
copyright, conflicts of interest and limitations and exceptions 232–8
private copying exception 233–4
public interest and other functions 234–6
regulating competition 236–8
framework of international and European law 242–5
existing framework of copyright exceptions and limitations 243–5
regulating competition within copyright 242–3
German case law and issues 245–51
competition, unfair see unfair competition law
competition in the field of collective management see collective management
competition law
    scientific research and 328, 353
    and territorial approach 468–75, 482
    compilations of facts, copyrighting of 4–5, 17, 111–20
    see also databases
complex works 188–91
Computer and Communications Industry Association (CCIA) 512

Computer Associates International, Inc. v Altai, Inc. 200
computer-generated works 12, 192
computer programs 10, 13, 102, 104, 167, 169, 470
conciliation 432
countries using 438, 439, 444, 445
confusion, risk of 88–9, 91, 92, 94, 97, 102, 103, 105
connecting factor 12
constitutional basis for copyright
    in Europe 362–4
    in Sweden 364–5
    in US 1–3, 9, 19, 40, 149, 151, 152, 362
Construct Data Verlag v Reed Expositions France 98
Consultant Immobilier v Aptitudes Immobilier 99–100
Contracting States 496, 501
control as a basis for property 453–6
Coombe, R.J. 70, 162, 168
Coordinating Council of Audiovisual Archives Associations (CCAAA) 512
Cooter, R. 215, 327
Copinger and Skone James on Copyright (Garnett et al.) 17, 111, 316, 460–61
COPY-DAN 395
Copyright Board of Canada 64, 71
Copyright Clearance Center 376
Copyright Designs and Patents Act see UK Copyright Designs and Patents Act (1988)
copyright law, economic rationale for 259–60
Copyright Licensing Agency 11, 322
copyright narrative 49–82
British 51–60, 81
Canadian 60–69, 82
US 81–2
copyrightability, private international law considerations relating to 39–43
Corbet, J. 195
Cornu, M. 178
Correia, C.M. 168
Cottier, T. 168
Council of Europe 431, 489
Court of Appeal of Athens 439
Court of Cassation 46, 89, 90–91, 92, 95, 96, 97, 100, 102, 104–5, 147, 177, 180
Court of First Instance 3, 22, 91, 96, 98, 102, 105–6
Craig, Carys J. 63
Cramp & Sons v Smythson (Frank) Ltd 13, 32, 114, 124
Crawford, Francine 149
Creative Commons International (CCI) 512
Creative Commons licensed works 311, 312, 314
522 Copyright law

déroulement 196
Desbois, Henri 345
Descartes, René 22, 26
design right 11
Designers Guild v Russell Williams 317
designs, protection of 11, 61, 100, 176, 213
Desjeux, X. 96, 97, 104
Desktop Marketing Systems Pty Ltd v Telesstra Corporation Limited 120
desktop publishing 323
Dessard, D. 101, 106
dessemontet, F. 358
desurmont, T. 198
Deutsche Grammaphon v Metro 476
developing countries 79, 230–31, 304, 361
dictionaries 105
dietz, A. 32–3, 182, 295, 322
digital archiving services 246, 248–9
digital lock-up 427–8
digital Media Association (DMA) 503
digital rights management (DRM) 283, 297–301, 307, 313, 321, 331, 375, 456
digitisation 204, 205, 382, 391
dingley, Brenda 324
dinwoodie, G.B. 304
Directive on copyright in the information society see EU Directive on copyright in the information society (Directive 2001/29/EC)
Directive on Designs and Models see EU Directive on Designs and Models
Directive on the re-use of public sector information see EU Directive on the re-use of public sector information (Directive 2003/98)
directory cases, UK 114–16, 124, 126, 127, 128, 129
disabled persons 237, 243
disclaimers 465–6, 468
distance learning 380
dittrich, Robert 345
document copy and delivery services 240
dominant market position 242–3, 264, 328
Dominican Republic 510
dominium 21
doutrelepoint, C. 191
downloads outside contractual territory 465–6
by students 381–2, 386–7, 388
Draft Treaty for the Protection of Expressions of Folklore against illicit Exploitations and other Traditional Actions (1984) 210
dramatic works, originality of 10, 12, 13–14, 15
drawings 9, 34–5, 104, 197
dreier, Thomas 232, 234, 242, 264, 334, 344, 348, 360, 445
drexì, Joseph 258, 260, 264, 268, 273, 276, 280, 294–5, 296
dreyer, E. 177
dreyfuss, R.C. 242, 257, 287, 304, 358, 450
droit d’auteur 8, 20–26, 27, 170, 339, 349, 451
droit moral see moral rights
dual licensing 314
duggal, Raoul 344
Duke of Queensberry v Shebbeare 138, 139
Dunnett v Railtrack 431
duration Directive 178, 183
dusollier, S. 170, 178, 318, 319, 332
duty to contract 270–71, 275
dworkin, G. 85, 86
dynamic competition 273–4
e-publishing 326–7
eC Duration Regulation 10, 14
eC Treaty
Article 81 468–9
Article 85 (3) 475
echerer, Raina A. Mercedes 255, 295
echerer Report 255
Economic Council of Canada 61
economic residency clause 257, 294, 295
economic rights 8–9, 20, 26, 27, 44, 70–72, 221, 222–3, 227, 260, 339
realigning copyright with its purpose
economies of scale and scope 265–6, 298
Ecuador 510
Edelman, B. 167, 190, 191, 192, 195, 196, 199, 200, 202, 205
Edgecliffe-Johnson, Andrew 297
*Edirom v Global Market Network* 91
*Editions Neresis v France Telecom Multimedia Services* 99
educational purposes, exceptions for see teaching exceptions
Egypt
and broadcasters’ rights 492, 493, 494, 495, 496, 497, 498, 499, 500, 505, 506
protection of folklore in 220
Einhorn, M. 72, 73, 268
*Eisenmann v Qimron* see *Dead Sea Scrolls* case
*Elanco Products Limited v Mandops (Agrochemical Specialists)* 117
Electronic Frontier Foundation (EFF) 512
electronic rights 193
*Elektronische Presearchive* 246
*Elektronischer Pressepiegel* 246
Elkin-Koren, Niva 327
EMI Music Publishing 277, 278
employment contracts 329
encryption 321
decoding of encrypted signals 490, 491, 495, 498, 499, 501, 506
encyclopaedias 112, 188, 192–3, 196, 198, 206, 240, 313
*Encyclopédie Douanière v Conex et Agence fiscale* 105
Endeshaw, Assafa 419
Enfield, W. 56, 142
*Engineering Dymanics Inc. v Structural Software Inc.* 17
engravings 9, 138, 140, 149
Enlightenment 55, 350
Epstein, J. 293
Epstein, Richard 54, 79–80
Ernst, Silke 390, 391
Ernst, Stefan 332
Ertmann, D. 329
Espinel, V. 291
essential/accessory test 192
essential facilities 328
*Estate of Hemingway v Random House* 153
*Estate of Martin Luther King v CBS* 153
Estee, A. 198
Estonia, alternative dispute resolution in 438–9
Estonian Copyright Committee 438, 439
ethics 80
EU Cable and Satellite Directive 450, 451–2, 481, 489
EU Database Directive
database right introduced by 18, 109, 121, 131
see also sui generis right
definition of database in 198
exceptions and limitations in 132, 250, 253
numbers of databases following introduction of 131
and originality requirement 17, 27, 120, 125–6
and public domain 169
and subsistence requirement 110, 112, 120–22, 123, 125–6, 127, 128, 130
and unfair competition 83, 95, 98, 99, 103, 104, 105, 106, 107
EU Directive on copyright in the information society (Directive 2001/29/EC)
and author’s rights 451
biased towards entertainment industry 315, 317–18, 351
and communication to the public 288
and cultural creativity 341
quotations exception 384, 394, 395–8
teaching exception 373, 380–95, 398–9
and exhaustion doctrine 476, 481
and information brokers 334
‘rightholder’ in 348
three core sectors requiring adjustment 351–4
and TPMs 319, 320, 330, 331, 333, 339, 429–30, 434–5, 443, 444, 445, 446
Index 523
EU Directive on Designs and Models
EU Directive on the re-use of public sector information (Directive 2003/98) 180, 181, 182
EU Rental and Lending Right Directive 194, 262, 452, 489
EU Software Directive 102, 174
Euromarket Designs Inc v Peters 467–8
European Broadcasting Union 503
European Bureau of Library Information and Documentation Association (EBLIDA) 512
competition policy of 469–75
Database Directive reviewed by 131
digital rights management (DRM) preferred by 455–6
Duration Regulation 10, 14
Green Paper on alternative dispute resolution in civil and commercial law (2002) 431, 432
Guidelines on Transfer of Technology 266–7
influenced by author’s rights position 19
and markets–regulation dilemma 306–8
Regulation (EC) 772/2004 on the Application of Article 81 (3) to certain categories of technology transfer agreements (2004) 469–74
European Community proposal to SCCR on broadcasters’ rights 492, 493, 494, 495, 496, 497, 498, 499, 502–3, 504, 506, 512
European Court of Justice 18, 19, 27, 109–10, 121–2, 129, 131, 177, 236, 250, 260, 264, 392, 451, 469, 475, 478
EU Directive on the re-use of public sector information (Directive 2003/98) 180, 181, 182
EU Rental and Lending Right Directive 194, 262, 452, 489
EU Software Directive 102, 174
Euromarket Designs Inc v Peters 467–8
European Broadcasting Union 503
European Bureau of Library Information and Documentation Association (EBLIDA) 512
competition policy of 469–75
Database Directive reviewed by 131
digital rights management (DRM) preferred by 455–6
Duration Regulation 10, 14
Green Paper on alternative dispute resolution in civil and commercial law (2002) 431, 432
Guidelines on Transfer of Technology 266–7
influenced by author’s rights position 19
and markets–regulation dilemma 306–8
Regulation (EC) 772/2004 on the Application of Article 81 (3) to certain categories of technology transfer agreements (2004) 469–74
European Community proposal to SCCR on broadcasters’ rights 492, 493, 494, 495, 496, 497, 498, 499, 502–3, 504, 506, 512
European Court of Justice 18, 19, 27, 109–10, 121–2, 129, 131, 177, 236, 250, 260, 264, 392, 451, 469, 475, 478
European Economic Area (EEA) 475
European Information and Communications Technology Industry Association (EICTA) 512
European Parliament 255, 269, 277, 295, 333, 387
exceptions and limitations to copyright 46–7
broadcasts 235, 236, 376, 494
in Canadian copyright law 64, 65
compatibility with international law 73, 342–9
Database Directive and 132, 250, 253
delegation rules expressed via 367
included in public domain 165, 171–3, 175, 179
interests serving as a basis for 450
and protection of folklore 225–6
quotation exception 376, 384, 394, 395–8
regulating competition by way of see competition, regulating by way of copyright limitations and exceptions
for scientific or knowledge-relevant information 352–3
in Swedish Copyright Act 356, 365
teaching exception 373–401
alternative dispute resolution as a means of solving disputes regarding 426, 429–30, 434–43, 446–7
national copyright laws without
ADR provisions as a means of solving disputes 443–6
for third parties offering public services 353–4
exceptions to freedom to copy principle 88, 93
exceptions to sui generis right 132
exclusive grant back clause 469
exclusivity, rejection of 176, 474, 479
Downloaded from Elgar Online at 02/28/2019 08:37:36AM via free access
exhaustion doctrine (first sale doctrine) 236, 300, 475–81, 482
expert determination 432
export bans 469
export of pirated goods 409, 414, 415, 420
Express Newspapers plc v News (UK) Ltd 33
extended collective licences 395, 452
externalities 259, 297
Express Corporation v Exxon Insurance Consultants 13
Fachoux, V. 189, 199
facts, copyrighting of 4, 111
see also compilations of facts, copyrighting of; databases
fair abridgement 140–41
fair compensation 387–8, 389, 392, 394
fair dealing 66, 73, 74, 76, 318, 322, 331, 333, 346, 364
fair use 75, 76, 172, 362, 376, 385, 428, 468
Farrer, T.H. 76
Fawcett, J.J. 44, 462
Feather, John 50, 135, 136, 137, 139, 142
Fechner, F. 362
Feist Publications Inc v Rural Telephone Service 1, 3–5, 9, 16–17, 19, 27, 66, 120
Feltes, Norman N. 76
Fender Musikinstrumente 467
Ficsor, M. 210, 344, 361, 385, 427
field of use restrictions 472
Fikenstscher, W. 215, 284
file sharing 80, 232, 309, 339–40, 454–5
film sector, market share in 351
films
adapted from novels 15, 75
broadcasting of 480–81
digital technology used in 309
duration of copyright protection 10
exclusions relating to 392
fixation of folklore in 213
holograms protected as? 14
improper or abusive exercise of copyright in 469
multimedia works as 186–206
pornographic 407
restoration and reconstitution of 48
source licensing and 298
territoriality and performing rights 479–81
UK Copyright Designs and Patents Act (1988) and 12
First, H. 242, 257, 287, 358, 450
first publication 57, 60, 69–70, 71, 74, 78, 139, 140
first sale doctrine (exhaustion doctrine) 236, 300, 475–81, 482
Firth, Alison 338
Fisher, Terry 340
Fisher, W. 301, 302, 304
Fitzgerald, Brian 63
Fitzpatrick, S. 429
fixation
of broadcasts 488, 489, 490, 491, 501, 504–5, 507
distribution of fixations 489, 491, 501, 506
reproduction of fixations 488, 489, 490–91, 504–5, 507
medium used for 204–5
fixed frames, sequences of 195–8, 206
Fixtures Marketing v OPAP 110
Fixtures Marketing v Oy Veikkaus 110
Flag of Sweden, The 370
Florenson, Paul 263, 289
Foged, T. 318, 321, 429
folklore, protection of 168, 207–31
existing protection by intellectual property and sui generis rights 212–17
copyright and neighbouring rights 212–13
customary law 215–17, 219–20, 224, 228, 229, 230
other intellectual property rights 213–14
sui generis laws 214–15
most recent Draft Provisions of WIPO and of the Model Law 2002 of the Pacific Community 217–30
beneficiaries of protection 219–21
contents and scope of protection 221–3
duration of protection 226–7
exceptions and limitations 225–6
folklore, protection of (cont.):
  - international and regional protection 229–30
  - management of rights 223–5
  - relation to intellectual property and certain measures 229
  - sanctions, remedies and exercise of rights 228
  - subject matter of protection 218–19
  - transitional measures 229–31
  - previous attempts to achieve 209–12
  - Berne Convention 207–9
  - model laws 209–10
  - recent attempts and the WIPO Intergovernmental Committee 210–12
  - secret folklore 213, 214, 216, 221, 222, 226
Folsom v Marsh 141
Football League Limited v Littlewoods Pools Limited 112, 118–19, 124
football league matches 116–17, 118–19, 124
Ford, P.L. 8
foreign books, importation of 51
formalities
  - Model Law 2002 of the Pacific Community 228
  - as a tool for separating author’s and public domain 137, 139–40, 147, 149–50
  - WIPO Draft Provisions 227–8
Foucault, Michel 55
Fox, G.C. 130
fragments of works 391, 395
France
  - alternative dispute resolution in 440–41, 442–3
  - judgments dealing with multimedia products in 206
  - originality in copyright law in 19–26
  - quotation exception in 397
  - respective domains of author and public in 18th to 19th century in 144–8
  - teaching exception in 390, 391, 392, 393
  - unfair competition law in 87–92
  - choice between infringement actions and 103–6, 107
  - cumulation of infringement actions and 95–100, 107
  - France Telecom v MA Editions 98
  - Françöis, André 345
  - free choice, right of 270–71, 275, 276, 280
  - free movement of services 479–81
  - freedom of contract 270–71
  - freedom of expression 450, 509
  - copyright and freedom of expression in Sweden 355–6
  - conclusions 371–2
  - constitutional positioning 364–5
  - practical applications 368–71
  - in Swedish fundamental law 365–8
  - EU Copyright Directive and 333
  - as a human right 316, 317, 357–61, 369, 371, 450
  - limitations and exceptions serving 232, 235
  - freedom to copy 87–8, 92–3, 171
  - freedom to pursue a trade or profession
  - Freiwalder, Sven 340
  - French Decret d’Allarde 92
  - French Regulatory Authority for Technological Measures 444, 442–3
  - French Revolution 284
  - Friedman, Thomas L. 81
  - Friends of Development 510–11, 512
  - Froitz, Gerhard 345
  - Fulton, Robert 152
  - furniture 14
  - Ganea, Peter 344
  - Ganley, P. 331
  - Garnett, K. 17, 111, 316, 461
  - Garon, Jon M. 51, 55, 70–71, 72, 78–9
  - Gasaway, Laura 399
  - Gasser, Urs 443
  - Gaudrat, P. 100
  - Gautier, P. 190, 205
  - Gee v Pritchard and Anderson 139
  - Torellmam - 9781848440210 via free access
Geist, M. 72
Geller, P.E. 355
GEMA 265, 277, 278, 296, 476
GEMA Vermutung 265, 296
geographical indications 213–14
geolocation services 305
geospatial data 130
German Civil Procedure Code 431, 445
German Copyright Act 245, 247, 248,
250, 262, 325, 333, 445
German Federal Supreme Court 47, 129,
245, 246, 247, 248, 250, 251, 253,
324, 348, 363
Germany
collective administration of copyright
in 263, 265, 271, 279–80, 296
constitutional basis for copyright in
362–3
database copyright in 129
newspaper market in 336, 342
originality in copyright law in 20–21
regulating competition by copyright
limitations and exceptions in
245–51
research expenditure in 324
solving disputes regarding
technological measures and
exceptions in 444–5
teaching exception in 390, 391, 392,
393
Gervais, D.J. 66, 68, 69, 70, 72, 73, 77,
78, 79, 80, 111, 344
Gewirth, A. 22–6
Gibbons v Ogden 152, 153
Gillardin, J. 101
Ginsberg, J. 35, 44, 45, 46, 50, 71, 113,
126, 132, 145, 164, 169, 319, 338,
339, 340–41, 378, 379, 380, 381,
385, 387, 396, 397, 398, 427
Girsberger, Michael 443
Gleize, B. 177
Glock France v Becheret 105
Gloy, W. 343
Goetting, H.P. 284
Golaz, E. 87, 88, 89, 90, 91, 93, 94, 95,
96, 97, 100, 102, 104
Goldstein, P. 5, 358
Google 332
Gordon, Wendy J. 56, 235, 260
Götting, Peter 264, 334
Gotzen, F. 100
government intervention 445–6, 449
governmentally administered reward
system 283, 301–2
challenges of global cyberspace 305
compliance with Berne Convention
and TRIPs 302–4
implications for investment and risk-
taking 305–6, 313
Greece
alternative dispute resolution in 439
Greek Copyright Organisation 439
greyhound racing 117–18, 119, 124
Griffiths, J. 450
Grokster 454
Grosheide, F. Willem 340
Groupe Audiovisuel et Multimédia de
l’Edition 189, 196
Groupe Miller Freeman v Neptune
Verlag 98
Groupe Miller Freeman v Tigest
Communication 98
Groves, P. 36
Guest, A.G. 21
Guilbault, Lucie 133, 161, 235, 450, 451
Guild v Eskander Ltd 32
Gunilla Bergström v Sveriges Radio AB
370–71
Gyles v Wilcox 140, 141
Haedicke, Maximilian 264, 334
Haeusermann, Daniel M. 390, 391
Hakers, H. 23
Hale, Robert L. 68
Hamlyn, D.W. 22
Hammond, Brean S. 143
Handig, Christian 263
Handke, Christian 260, 264
Hansen, G. 325, 329, 330, 332
Harari, J. 55
Harbottle, G. 111
Hargrove, Francis 142
Harper & Row, Publishers, Inc. v Nation
Enters 316
Harrison v Hogg 140
Hart, Michael 429
Harvard University Berkman Center 375
Hays, Thomas 455
Hayter, Thomas 143
Heald, Paul F. 150
Copyright law

Heide, T. 303
Heinemann, Andreas 328
Helberger, Natali 328, 456
Hell, François 146
Heller, M.A. 292
Henning-Bodewig, F. 84
Henry, M. 477
Hensher v Restawhile 14
Hertin, P. 197
Hesse, Carla 50, 145, 146
Hettinger, Edwin 76, 79
Hey, A.J.G. 130
Heymann, L.A. 455
Hierarchy of goods 25–6
HM Stationery Office Ordnance Survey v Automobile Association 12
Hoeren, Thomas 319, 325
Hogarth’s Act (1735) 138, 140, 149
Holograms 14
Holyoak, J. 45
Honduras, and broadcasters’ rights 492, 493, 495, 496, 497, 498, 499, 505, 506
Hong Kong 413
Honore, A.M. 21
Honsell, Heinrich 352
Horserace Betting Levy Board 109
Horton, A. 85, 86
House of Commons Standing Committee on Communications and Culture (1985) 61–2
Hugenholtz, P.B. 105, 131, 133, 161, 234, 286, 318, 358, 360, 363, 381, 429, 450, 451, 452, 454, 456
Hughes, Justin 50, 69
Human right
Copyright as 357–61, 371
Education as 375
Freedom of expression as 316, 317, 357–61, 369, 371, 450
Human Rights Act (1998) 316
Humphreys v Thompson 338
Hyde, Lewis 136, 149, 150
Hyperion Records v Lionel Sawkins 15, 28–38, 48
Hyperlinking 240, 246–7, 249–50, 332
iTunes 293
Idris, Kamil 510
Illustration for teaching, use for sole purpose of 379–80, 383–4, 386, 391, 393, 394
‘image’, as a prevalent element 191–4
Imperial system 8
Implicit licences 466
IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG 328
Inappropriability 166
Incentive theory 337, 352
Incorporal property rights 137, 148
Independent Television Publications Limited v Time Out Limited and Elliott 116
India
And broadcasters’ rights 490, 509
Protection of folklore in 209
Indigenous world views 215–17
Indonesia
Commercial Courts in 416–17, 422
Copyright piracy in 403, 416–17
Indonesian Optical Discs Law 416, 417
‘industrious collection’ doctrine see ‘sweat of the brow’ doctrine
Information
Cost of 325–6
Information breaking 331–5, 353
Information gathering processes and originality 113–20
Information value-added services 335–6, 353–4
Competition in 239–40
Conclusions 251–4
German copyright cases and 245–51
International and European copyright law and 242–5
Need for 240–42
And scientific research 335–6
infringement
choice between unfair competition laws and infringement action 103–8
contracts to protect against 338
cumulation of unfair competition laws and infringement action 95–103, 107
insurance coverage for 266
private international law considerations relating to 43–7
punishment for 146
through authorisation 465–6
trade mark infringement 466–8
innovation policy 61
instrumental approach of copyright 449, 450
Intar-Tass case 39–40, 41, 44
integrated expressions 187–8, 203
integrity, right of 69, 78, 180, 221, 222, 223
intellectual commons 162
interactivity of multimedia works 187–8, 203–4, 205–6
‘sequence of moving images’ and 198–202
Interlego AG v Tyco Industries Inc 32, 34–5
intermediaries, imposing liability on 67–8
internal market 333, 400, 456
International Bar Association Intellectual Property and Entertainment Committee 422
International Confederation of Societies of Authors and Composers (CISAC) 511
International Federation of Film Producers Associations (FIAPF) 511
International Federation of Library Associations and Institutions (IFLA) 512
International Federation of the Phonographic Industry (IFPI) 405
International Literary and Artistic Association (ALAI) 362, 511
International Musicians Forum (IMMF) 512
internet search engines 238, 240, 251, 332
Internet Service Providers (ISPs) 64, 66–7, 68
intervention mechanism 435, 443, 444, 445
IP courts, specialist 402, 419, 421–4
IP Justice 512
IP Watch 487
Ireland
and broadcasters’ rights 490
solving disputes regarding technological measures and exceptions in 444
teaching exception in 394
unfair competition law in 86–7, 107
isonomia 25
Italian Standing Committee on Copyright 440–41, 443
Italy
alternative dispute resolution in 436, 440–41, 443
collective management of copyright in 296
quotation exception in 397
teaching exception in 390, 391, 393
Izorche, M.-L. 87, 90, 96
Jackson, John H. 80, 81
Jacob, Gilles 144
Jacover, A. 340
James, J.R. 316, 461
Japan, and broadcasters’ rights 490, 492, 493, 495, 496, 497, 498, 499, 500–501, 504, 506
Japan Electronics and Information Technology Industries Association (JEITA) 511
Jaszi, Peter 50, 55, 70
Jataka v EIP 99
Jean-Louis H. v Net Fly – Strategies Networks 106
Jefferson, Thomas 8–9, 81, 150
Jeffreys v Boosey 16
Jeroham, H.C. 316, 385, 450
jewellery 14
Jobard, J.-B. 148
John Huston case 46
Johnson, D.R. 305
Johore Bahru 415
Jones, V.H. 86
Copyright law

Jones v London Borough of Tower Hamlets 14
journals 322, 324
Joyce, Craig 150
Judge, Elizabeth F. 79

Kajang 415
Kant, I. 22–3, 24, 26
Kaplan, B. 50
Karnell, G.W.F. 355
Katz, Ariel 261, 262, 265–6, 267, 272, 284, 291, 298, 300
Katzenberger, Paul 344
KáZaA 454
Kelantan 415
Kelly, Edward J. 403, 418, 419
Kelly v Morris 114–15, 116
Kent, James 138
Kenya

and broadcasters’ rights 492, 493, 495, 496, 497, 498, 499–500, 501, 505, 506

and WIPO’s role 510
Keplinger, Michael 486–7
Kerby, S.N. 265
Kerever, André 345, 348, 357

Key Publications Inc. v Chinatown Today Pub. Enters. Inc. 15
Keyes, A.A. 61
King, Stephen 293
Kirby, S.N. 284–5
Klang Valley 415
Knoill/Hille-Form 469
Koch, F. 205
Koelman, K.J. 318, 331, 456
Kohn, A. 72
Kohn, B. 72

Kopienversanddienst 246, 324
Korea, republic of, and broadcasters’ rights 491
Kota Bharu 415
Kota Kinabalu 415
Koumantos, G. 189, 197
Kreile, J. 193, 205
Kreile, Reinhold 265
Kretscher, M. 260, 278, 284, 452
Kuala Krai 415
Kuala Kubu Bahru 415
Kuala Selangor 415
Kuala Terengganu 415

Kur, A. 214
Kurlantzick, L. 72, 73
Kuruk, P. 210
Kusoy, Erna L. 417

La jetée (film) 196
Laboulaye, Edouard 148, 154
labour-based rights, Lockean 21–2, 52–4, 56, 63, 167
Ladbroke (Football) Ltd v William Hill (Football) Ltd 31, 37, 111, 114, 116–17, 124
Laddie, H. 15, 35, 190, 191, 196, 197, 198, 204, 315, 323
Lambert, John 432, 434
Landes, William M. 79, 259, 260
Lange, David 133, 161
language, use of 465
Laslett, Peter 56
Latvia, alternative dispute resolution in 436–7, 438, 447
Latvian Ministry of Culture 437
The Law Society of Upper Canada v CCH Canadian Ltd., Thomson Canada Ltd and Canada Law Book Inc. 32
Le Boucher (film) 480
Le Chapelier, Isaac 145–6
Le Serveur Administratif v Editions Legislatives 105
Le Tourneau, P. 87, 89, 90, 96, 104, 105 lectures 13
Lee v Gibbings 338
legal directories 16
legal uncertainty 375
Lehmann, Michael 264, 284, 334
Leinemann, F. 362
Leistner, M. 455
Lemley, Mark 73
Lemos, R. 312
Les Misérables (Hugo) 144, 180
Lessig, Lawrence 133, 134, 286, 297, 301, 319, 320, 332, 336, 340
letters 57–8, 138–9
levies 455–6
Lewis, T. 302
lex loci delicti 44, 47
lex situs 41
Lexis-Nexis 326
Liaskos, E.-P. 452
libraries
exceptions relating to 234, 240, 243, 246, 248, 250, 324, 376, 428
NGOs representing interests of 512
property and control and 453–4
licensing see extended collective licences; source licensing; statutory licences
Liechtenstein, teaching exception in 395
Liedes, Jukka 487
Lili Marlene 363
Lim, T. 38
Lima, F. 455
limitations to copyright see exceptions and limitations to copyright
Linant de Bellefonds, M. 192
Lincoff, Bennett M. 257, 258, 287
Lindbaum, Peter 52
Linde AG, Winward Industries Inc. and Radio Uhren AG 177
Linnenborn, Oliver 330
Lipton, J. 112
literary works
collections of data protectable as 112–13
originality of 10, 12, 13, 15
private international law considerations relating to 42
Lithuania
alternative dispute resolution in 437–9
teaching exception in 395
Lithuanian Copyright Council 437, 438, 439
Litman, J. 161, 316, 332
live performances 11, 65, 394, 395, 498
Livingston, Robert 152
Livingston v van Ingen 152
Llewelyn, David 51, 58, 59, 86, 318, 337, 338, 340
Locke, John 21–2, 52–4, 56, 63, 136, 167
Loewenheim, U. 284, 316, 319, 339
Lois sur les Pratiques du commerce et sur l’information et la protection du consommateur (LPCC) 92, 93, 95, 100–102
Loren, Lydia Pallas 284
Lucas, A. 69, 104, 191, 344, 397
Lucas, Henri-Jacques 69, 104
Lucas-Schoetter, A. 212, 214
Lucazeau v SACEM 260
Lüder, Tilman 256, 276, 277, 278, 281
Lunney, G.S. 340
Luxembourg
quotation exception in 397
solving disputes regarding technological measures and exceptions in 444
teaching exception in 390, 391, 393
Macaulay, Catherine 143–4
Macciacchini, Sandro 316
Mackaay, E. 319
Mackie, K.J. 431, 433
Macklin v Richardson 138
Maclaurin, J. 142
MacQueen, H. 38
Madison, James 81, 149, 151–2
Magill TV Guide/ITP, BBC and RTE 22, 237
Majer, Ludwig 256
Makeen, M.F. 284
Malacca 415
Malaurie-Vignal, M. 89, 90, 91, 97
Malaysia
copyright piracy in see piracy
specialist IP court in 402, 422–4
Malaysian Anti-Money Laundering Act (2001) 404, 405–6, 419
Malaysian Copyright Act (1987) 405, 407–8, 409, 411–13, 423
Malaysian Customs Act (1967) 404, 405, 409
Malaysian Evidence Act (1950) 412
Malaysian Film Censorship Act (2002) 404, 405, 407
Malaysian Intellectual Property Association 422
Malaysian Ministry of Domestic Trade and Consumer Affairs 402, 406, 408, 410, 413, 415, 421, 422, 425
Malaysian Motion Pictures Association 402, 404, 413
Malaysian Price Control Act (1946) 404, 405
Mauclaurin, J. 142
Maurer, Jean-Robert 142
Maxwell v Stone
Lucazeau v SACEM 260
Lucas, A. 69, 104, 191, 344, 397
Lucas, Henri-Jacques 69, 104
Lucas-Schoetter, A. 212, 214
Lucazeau v SACEM 260
Lüder, Tilman 256, 276, 277, 278, 281
Lunney, G.S. 340
Luxembourg
quotation exception in 397
solving disputes regarding technological measures and exceptions in 444
teaching exception in 390, 391, 393
Macaulay, Catherine 143–4
Macciacchini, Sandro 316
Mackaay, E. 319
Mackie, K.J. 431, 433
Macklin v Richardson 138
Maclaurin, J. 142
MacQueen, H. 38
Madison, James 81, 149, 151–2
Magill TV Guide/ITP, BBC and RTE 22, 237
Majer, Ludwig 256
Makeen, M.F. 284
Malacca 415
Malaurie-Vignal, M. 89, 90, 91, 97
Malaysia
copyright piracy in see piracy
specialist IP court in 402, 422–4
Malaysian Anti-Money Laundering Act (2001) 404, 405–6, 419
Malaysian Copyright Act (1987) 405, 407–8, 409, 411–13, 423
Malaysian Customs Act (1967) 404, 405, 409
Malaysian Evidence Act (1950) 412
Malaysian Film Censorship Act (2002) 404, 405, 407
Malaysian Intellectual Property Association 422
Malaysian Ministry of Domestic Trade and Consumer Affairs 402, 406, 408, 410, 413, 415, 421, 422, 425
Malaysian Motion Pictures Association 402, 404, 413
Malaysian Price Control Act (1946) 404, 405
Paul Torremans - 9781848440210
Downloaded from Elgar Online at 02/28/2019 08:37:36AM via free access
532 Copyright law

Malaysian Trade Descriptions Act (1972) 404, 405, 406, 423
Malaysian Trade Descriptions (Original Label) Order (2002) 404, 405, 406
Mallet-Poujol, N. 96, 100
Malta
- solving disputes regarding technological measures and exceptions in 444
- teaching exception in 390, 391
- mandatory rules 45–6
- Manifesto, The 368–9, 370
- Mansfield, Lord (William Murray) 58–9, 138, 142, 144, 155
- manuscripts 58, 138–9
- maps 107, 138, 149
- market failure 259, 262, 298, 301, 310, 341–2, 349, 450
- market regulation 449
- market-regulation dilemma 306–8, 310–12
- market share thresholds 470–71
- Marks, D.S. 427
- Marriott, A.L. 431, 432
- Maskus, K. 168, 302
- Masouyé, Claude 348
- material property 177–8
- Maurer, S.M. 131
- Max Planck Institute (MPI) 511
- McCreevy, Charlie 369
- McPherson, Isaac 9
- MCPS-PRS Alliance 277, 278, 297
- med-arb procedure 432–3
- media monitors 335–6
- mediation 429–30, 431–2, 433, 434, 435, 436, 452
- countries using 436–40, 445
- Melamed, A.D. 300
- Melichar, F. 284, 296
- Menand, Louis 80
- Merck & Co Inc v Stepbar BV 476
- Merges, R. 162, 284, 299
- Merlet v Mothercare 14
- Merton, Robert K. 53
- Mestmäcker, E.-J. 257
- Metro-Goldwyn-Mayer Studios Inc. et al. v Grokster, Ltd. et al. 309
- Mexico, and broadcasters’ rights 492, 493, 494
- Microsoft Europe 328
- Midway Mfg. Co. v Artic International, Inc. 200, 201
- Midway Mfg. Co. v Strohen 200
- Mill, J.S. 67
- Millar v Kincaid 57
- Millar v Taylor 8, 142, 155, 316, 337
- Miller, D. 25
- Milton, John 52
- mimes 13–14
- minimum protection principle 229–30, 397, 398
- misleading advertising 84, 86, 97, 103, 108
- passim
- models 14, 100, 176
- Modern Law of Copyright and Designs (Laddie, Prescott and Vitoria) 15, 34–5
- money laundering 404, 405–6, 419
- monorepertory-multiterritory licences 296
- Montagnani, M.L. 309
- moral rights 20, 22, 59
- as additive goods 26
- common law copyright and 45, 69–70, 78
- determined by law of protecting country 44–5
- divulgation 382
- duration of protection 21, 180, 144, 180, 495
- folklore and 221, 222, 223
- and freedom of expression 355, 361, 370–71
- infringement and 37–8
- penalties for offences relating to 416
- recognition in English legal system 338
- software agreements and 470
- Morocco, protection of folklore in 220
- Missouri, protection of folklore in 220
Index 533
normal exploitation of the work, no conflict with 74, 233, 244, 250, 344, 345–7, 386–7
Norowzian v Arks Ltd and Guinness Brewing Worldwide Ltd 14
North American Free Trade Agreement (NAFTA) 490
notice of copyright 149, 150
Nottage v Jackson 3
Novello & Co LD v Hinrichsen Edition LD and Another 43
Nurdin, Adriani 417
O’Neill, Kate 74
O’Rourke, Maureen 284
Ochoa, Tyler T. 133, 134, 162
OCP Repartition v Salvea 99
official texts 169, 173, 174
Ohly, Angsar 264, 334
Okehji, Ruth 73, 284
Oliar, Dotan 152
one-stop shop 257, 258, 265, 269, 272, 273
online mode, legal status of 288–9
on-line teaching and copyright see teaching exceptions
Onsrud, H.J. 131
Open Knowledge Foundation (OKF) 512
open source software 311, 312, 314
optical disc piracy 404–5, 409, 416, 417, 418–19, 421
original label requirement 406
original literary, musical and dramatic works 10, 12–15, 36
originality in copyright law 1–27, 31–6, 48, 66, 111–12
author’s intellectual creation as test of 125–6, 167
and copyright in restored/reconstituted works 28, 31–6, 43, 48
downstream competition regulated by 237
information gathering processes and 113–20
private international law considerations relating to 42–3
quantitative baseline of 125–6
orphan works 181
Ostergard, Robert L., Jr 79
Ott, Claus 327

Ottolia, Andrea 427
over-protection 83, 84, 87, 103, 106, 107, 130
see also simultaneous over-protection
Owens, Richard 81
ownership of copyright, proof of 411–13
Pac Man decision 200
paintings 9, 34, 35, 48, 64
Panggabean, Adolf 417
Panizzon, M. 168
Paperboy 246, 251
parasitism, protection of databases against 83–108
Parfums Christian Dior SA v Evora BV 236, 477–8
Paris Book Guild 145
Paris Convention for the Protection of Industrial Property (1883) 84–5, 361, 406
Paris Court of Appeal 91, 92, 97, 98, 104, 106, 443
parody 370
parts of works 237, 391, 393, 395
Pasgrimaud, H. 191
Passa, J. 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 100, 104, 105, 106
patents
common law and 151, 152
Congress’s power to regulate through 149, 152
duration of protection 169–70, 227
folklore and 168
infringement 96, 97, 100
innovation policy and 61
printing patents 52
and public domain 176, 177
software programs and 470
subject matter of patent right 477
TRIPs Agreement and 360
paternity right 29, 38, 69–70, 78, 180, 221, 222, 223
Patterson, L. Ray 50, 52, 54, 55, 58, 134, 139, 150
Payline 467
PC ownership 309
PCR Ltd v Dow Jones Telerate Ltd 120
Peak Holding AB v Axlom-ElinorAB 475
Pearse v Overstrap 44
Parliament of Australia 335
Park City MV v Koppers Ltd 479
Paris Court of Appeal 483
parody and copyright 483
Parliament of Japan 494
Patterson, L. Ray 50, 52, 54, 55, 58, 134, 139, 150
Payline 467
PC ownership 309
PCR Ltd v Dow Jones Telerate Ltd 120
Peak Holding AB v Axlom-ElinorAB 475
Pearse v Overstrap 44
Parliament of Australia 335
Park City MV v Koppers Ltd 479
Paris Court of Appeal 483
parody and copyright 483
Parliament of Japan 494
Patterson, L. Ray 50, 52, 54, 55, 58, 134, 139, 150
Payline 467
PC ownership 309
PCR Ltd v Dow Jones Telerate Ltd 120
Peak Holding AB v Axlom-ElinorAB 475
Pearse v Overstrap 44
penalties for piracy 409–10, 414, 416, 417, 418, 419, 421
Penang 415
Perceval v Phipps 139
Pérez de Ontiveros Baquero, Carmen 397
performing artists 343, 365
periodicals 320, 324, 326, 328
personal online video-recorders (online PVRs) 240
personal research 234
Peru, and broadcasters’ rights 507
Peter Pan (Barrie) 154
Petré, G. 365, 367
Petri, G. 355
Peukert, A. 318, 319, 328, 330, 335, 340, 345, 350, 450
Pfister, Laurent 148
Pflüger, T. 329
Phillips, Jeremy 338
phonogram recordings 9, 154, 290, 291, 292, 320, 321–2, 343, 485
photocopies 11, 64, 66, 322, 394
photographs
Acts of Parliament protecting 9
as artistic works 14, 42
as audiovisual works 195, 203
constitutional right of Congress to protect 2–3
copying of 39–40
of DVDs 412
folklore and 213
originality requirement and 13, 34, 35, 167
Picot, Guillaume 143
‘picture’, compared with ‘image’ 191–2
pictures 14
Pierrat, E. 332
Pierre Hugo v Editions Plon 144
Pinckney, Charles 152
piracy 68, 292, 402–3, 493
common social and cultural factors behind 419–21
in Indonesia 403, 416–17
in Malaysia 403–4
cases proceeding to trial 414–15, 425
legal weapons against piracy 404–13
need for a special IP court? 421–4
penalties for piracy 409–10, 414
raids 403, 404, 413–14, 415
rigorous enforcement measures 420–21
in Thailand 403, 417–19, 421
plagiarism 105
plays 13–14, 138, 394, 479
pod-casting 378
poems 13, 126, 128–9
point-to-mass architecture 286–7, 288, 303, 312
point-to-point architecture 287, 288, 303, 312
Poland, teaching exception in 395
Pollaud-Dulian, F. 185
Polydor 476
Pool, E. De Sola 293
Pope v Curll 57–8, 138–9
pornography 406–7
Portmann, Wolfgang 352
Portugal
alternative dispute resolution in 440
teaching exception in 390, 393
Portuguese General Authority of Cultural Activities (IGAC) 440
Portuguese Ministry of Culture 440
possession of pirated goods 408–9
Post, D. 305
Poulin, D. 319
power to arrest without warrant 410
pre-broadcast signal, protection of 491, 494, 501, 506, 507
Prescott, P. 15, 35, 190, 315
press-clipping services 240, 246, 247, 249, 250, 251
press monitoring services 342
prices, restriction of ability to determine 471, 473
primary exploitation 285–6, 290, 292, 305–6, 312–13
principle of generic consistency (PGC) 22–6
principle of pre-emption 87–8, 103
printing patents 52
printing press 5, 51, 62, 64, 135
printing privileges 135, 144–5
prints 138, 149
prior and informed consent (PIC) 221, 222, 223, 224, 225, 226
Pugliatti, G. 228
presumption of authorship 102
prevention of contact 48
prevention of criminal damage 47
prevention of theft 48
pretend imports 43
Price, Mark 348
price-setting 473
primates 187
Printers Act 1734 135
printing privileges 135, 144–5
Pona, Jean 141
Porlock, W. 15
Portes, Abstract 354
porridge 187
Portugal, teaching exception in 395
Portuguese Ministry of Culture 440
Portuguese General Authority of Cultural Activities (IGAC) 440
Portuguese Ministry of Culture 440
possessions of pirated goods 408–9
Post, D. 305
Poulin, D. 319
power to arrest without warrant 410
pre-broadcast signal, protection of 491, 494, 501, 506, 507
Prescott, P. 15, 35, 190, 315
press-clipping services 240, 246, 247, 249, 250, 251
press monitoring services 342
prices, restriction of ability to determine 471, 473
primary exploitation 285–6, 290, 292, 305–6, 312–13
principle of generic consistency (PGC) 22–6
principle of pre-emption 87–8, 103
printing patents 52
printing press 5, 51, 62, 64, 135
printing privileges 135, 144–5
prints 138, 149
prior and informed consent (PIC) 221, 222, 223, 224, 225, 226
private copying exception 233–4, 247, 248, 381, 430, 440, 441, 446, 470
private international law considerations 38–48
copyrightability 39–43
infringement 43–7
professional authors 143
property, control as a basis for 453–6
protection of the commons 175, 179–80
proving ownership of copyright 411–13
Prudhon, Joseph 148
public access, promotion of 179–82
public domain
and author’s rights in early British, French and US copyright law 133–55
folklore in 229
regime of 161–84
charges for access 182–3
conclusion 183–4
current definition of 164–5
current scholarship on 161–2
effective access under new regime 179–82
key objectives of a new regime 173–5
limits of current definition of 165–71
metaphors used to depict 163, 165–6, 170–71, 172
new definition of 171–3
rules for new regime 175–83
technological measures controlling information in 427
public goods 78–9, 259, 264, 327
public interest
balance between private rights and 75, 76, 111, 132, 164, 168, 183, 347, 361, 363, 387, 399
EU Copyright Directive (2001) and 333
limitations and exceptions serving 235, 237–8, 316–17, 344–5, 362–3, 387, 399, 434, 439, 440, 441, 444, 446
Public Knowledge 512
public lending right scheme 11, 452
Public Performance in TV Shops 370
public performance right 141–2, 145–6, 147, 268, 288, 291, 495, 501, 504–5, 507
exhaustion doctrine and 479–81
public policy 31, 169
Public Prosecutor v KTA (Sarawak) Sdn Bhd 411
public rendition 495, 500, 501
public sector bodies, re-use of documents held by 180, 181, 182
public speeches 33, 239, 335
published editions, typographical arrangements of 10–11, 12
Pulau Pinang 415
Pusher, The (film) 370–71
Puttemans, A. 87, 89, 92, 95, 101, 102, 103, 107
Putzeys, D. 101
Qimron, Elisha 38–9, 43, 47
qualitative effects of copyright policies 449–59
control as a basis for property 453–6
grounds for opposing a quality-enhancing function of copyright 449
legal balance between property and access 450–53
quality in regulated markets 457–9
Quality King Distributors, Inc v L’Anza Research International, Inc 478–9
quasi-slavish copying 88–9
quotation exception 376, 384, 394, 395–8
R v Re Quotation of News Pictures 127
Rabe, H.-J. 259
Radcliffe, M. 185
Radio Telefis Eireann v Commission 37, 237, 328
Rae, David 142
Ragnemalm, H. 365, 367
Ralph, James 142
RAM copies 381
Ramos, Jacque 375
Rand, B. 53
Re a Musical Hits Database 129
Re Copyright in Editors’ Names 127, 130
Re Ernest Bevin Ltd 469
rebroadcasting/retransmission 452, 488, 489, 490, 491, 500, 501, 502–5, 504–5, 507
reciprocal agreements 472
reciprocal representation agreements 255, 256–8, 260, 262, 270, 273, 280, 281, 294, 295, 296
record companies 285, 290, 292, 485
recording see fixation
Recording Industry Association of Malaysia 403
records and cassettes 476
Redfearn, Nicholas 416
Reese, R. Anthony 141
reference, legal technique of 220
registration of expressions of folklore 221–3, 226–8
registration of printed texts 6, 8, 51–2, 54, 139–40, 150
registration under a governmentally-approved reward system 302
Reichman, J.H. 168, 237, 302
Reinbothe, J. 322, 344–5, 348, 361, 427
relinquishment of copyright 169–70, 178
Renouard, Augustin-Charles 148
Rental and Lending Right Directive see EU Rental and Lending Right Directive
rental right 477
Report of Lakanal 146
reproduction right 146, 147, 488, 489, 490–91, 501, 504–5, 507
research, copyright law and see scientific research, copyright law and research funding, cuts in 324–5
reservations 495
revolutionary rhetoric 146
reward theory 337
Ricolfi, Marco 261, 262, 303
Rideau, Frédéric 145, 146, 147
Riesenhuber, K. 259, 264, 265, 295
right-holders option 268–73, 274
rivalry of use, preservation of 175
robbery 68–9
Robertson, Aidan 85, 86
Robinson, A. 28
Rock Records (M) Sdn Bhd v Audio One Entertainment Sdn Bhd 411–12
Rogers, Pat 57
Roman law 21, 25
Rome Conference (1928) 396
Rome Convention (1961) 322, 352, 484
members of 493
protection of broadcasting organisations in 322, 485, 487–8, 490, 494, 495, 496, 500, 507
Rose, C. 167
Rose, Mark 50, 52, 55, 56–7, 59, 133, 134, 139, 142
Rosén, J. 360, 361, 371
Roubier, P. 90, 96
Rouse & Co International 416
Rousseau, Jean Jacques 22
Royal Commission on Patents, Copyright, Trade Marks and Industrial Designs 61
Royal Society 317, 322–3, 327, 331
royalty clauses 469
royalty payments 11, 233
collecting societies and 257, 264, 270, 273, 274, 280
inter-country differences in 476
ongoing right to 154, 182
public lending right and 11, 452
Russian Federation, and broadcasters’ rights 490
Russian law 40, 44
SACEM 284
Saint-Gal, Y. 88, 94
Salop, S.C. 265, 284–5
Salzburger, Eli M. 327
Samuels, E. 162
Samuelson, Pamela 133, 319, 320, 321
Sanders, A. Kamperman 88
Santiago and Barcelona Agreement 256, 294
Sarti, D. 285
satellite broadcasts 496–7, 499
Satellites Convention 488–9
satire 370
Sawkins, Lionel see Hyperion Records v Lionel Sawkins
Scassa, Teresa 63
Schack, H. 202, 322
Schäfer, Hans Bernd 327
INDEX 537
Schmidt, M.M. 256, 270
Schmidt, O. 332
Schmidt-Szalewski, J. 85, 88, 89, 96, 97, 104
Schönning, Peter 445
schools 234, 237, 392, 395, 398–9
Schrick, G. 84, 85, 197, 344, 363, 445
Scheck v William Morrow & Co 16
Schulze, Gernot 344, 445
Schumpeter, Joseph R. 273
Schwartz, Paul M. 150
scientific research, copyright law and 315–54
actual changes and effects 321–9
implications for the market 324–7
technical development 321–3
two approaches to a solution 327–9
copyright considerations 330–50
access to information 330–31
added value services 335–6
assessment from the point of view of the interests concerned 336–42
information broking 331–5
interim conclusion 349–50
international law and the three-step test 342–9
required adjustments to Directive on copyright in the information society 351–4
threat to availability of content 315–21
scope of protection 43–6
in Model Law of the Pacific Community 222–3
in Berne Convention 42, 484, 485
as a tool for separating author’s and public domain 138, 140–42, 147, 150
in WIPO Draft Provisions 221–2
Scott v Sandford 111
sculptures 9, 14, 235
search engines 238, 240, 251, 332
Second Restatement rule 40
secondary exploitation 285, 286, 290, 305, 312–13, 346–7
secret folklore, protection of 216, 221, 222, 226
‘securing’ of rights 149, 151–3
Sell, Susan 77

Senftleben, Martin 244, 342, 345, 346, 348
Sepang 415
Serra, Y. 90
services, free movement of 479–81
Seth, T. 360
Seville, Catherine 50, 154, 446
SGAE 278
Shah Alam 415
sheet music 138
Sheldon v Metro-Goldwyn Pictures Corp. 75
Sherry, Suzanna 150
Shih Ray Ku, R. 322
Sieger, F. 322
Sierra Leone 510
Simmons, Samuel 52
simulcasting 502–3, 507, 509, 512
simultaneous over-protection 83, 95, 100, 107
simultaneous protection 95–107
Singapore, and broadcasters’ rights 491, 506–7
Singh, Jagjit 405
Sirinelli, P. 45, 46, 185
slavish copying 88–9, 91, 93–4, 97, 99
Slovak Republic, teaching exception in 391
Slovenia
alternative dispute resolution in 439–40, 447
teaching exception in 395
smuggling 409
‘smut’ materials 406–7
Snow, A. 260
social exchange 311–12, 313–14
social norms 80
social rights 8–9, 27
Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers 63, 64, 66–8
software see computer programs
software agreements 469–74
Software Directive see EU Software Directive
Solberg, Thorvald 149
sole source products 241
Solid Gold Publishers Sdn Bhd v Chan Wee He and Ors. 411, 412
Sony Corp. of America v Universal City Studios, Inc. 69
sound, use of 202, 203
sound recordings 7, 9, 10, 12, 153–4, 290, 291, 292
source identification code 417, 418–19
source licensing 298
South Africa 509, 510
Souther v Sherwood 138, 139
Spada, Paolo 256, 285, 286, 300, 301
Spain
quotation exception in 397
solving disputes regarding technological measures and exceptions in 444
teaching exception in 393–4
specialised courts 402, 419, 421–4, 445
Spindler, G. 455
sporting cases, UK 118–20, 124, 126, 127, 128, 129
Sprang, C. 322
Stamatoudi, I. 185, 286, 478
standing injunctive order 299
Star Chamber 52
Stationers’ Company 6, 51–2, 54, 55, 56–7, 69, 81, 135, 136, 137, 139–40
Stationers’ Hall 6, 8
Statute of Anne (1709–10) 6, 7, 8, 9, 19, 26–7, 51, 54, 57, 58, 59, 69, 81, 149
and respective domains of author and public 134, 135–42
statutory affidavit 411–13
statutory licences 334, 335, 336–7, 339–40, 341
and education 375–6, 387, 399
international law requirements and 344–9
steamboat monopolies 152–3
Stempfhuber, M. 330
Stemra, Buma 458
Stepan, Paul 260
Sterling, J.A.L. 285
Stern Electronics, Inc. v Kaufman 200
Story, Joseph 155
Story, William Wetmore 155
Stowe v Thomas 150
Strauss, William S. 153
Strokes, S. 317
Strowel, A. 54, 88, 92, 95, 164, 167, 185, 195, 319, 339
subject matter of protection as a tool for separating author’s and public domain 137, 138–9, 147, 149
in WIPO Draft Provisions 218–19
subsistence of copyright in databases 110, 112, 120–30
Hyperion’s position on 36–7, 48
UK Copyright Designs and Patents Act (1988) and 11–12
sui generis right
database right 83, 87, 121, 127, 130, 131, 132, 250, 254, 365
BHB not protected by 18–19, 109–10, 121–2
choice between unfair competition action and 103–8
cumulation of unfair competition action and 95–103, 107
exceptions to 132
limitations of 18–19
and protection of folklore 210, 211, 214–15
Sunder, M. 133, 168
Supreme Court of Canada 32, 63–8, 66–7, 82
Supreme Court of Indonesia 417
Supreme Court of Israel 38
Supreme Court of Sweden 368–71
Supreme Court of Thailand 419
Suthersanen, U. 450
’sweat of the brow’ doctrine 5, 9, 19, 27, 66, 337
Sweden
copyright and freedom of expression in 355–6
conclusions 371–2
constitutional positioning 364–5
practical applications 368–71
Sweden (cont.):
in Swedish fundamental law 365–8
solving disputes regarding
technological measures and
exceptions in 444
Swedish Act on Names and Pictures in
Advertising (1978) 366
Swedish Copyright Act 356, 365, 367,
369, 371, 372, 444
Swedish Freedom of Expression Act
Swedish Freedom of the Press Act
(1809) 355
Swedish Freedom of the Press Act
(FPA) (1949) 364, 365–7, 372
Swedish Government Form (GF) (1809)
355, 364
Swedish Government Form (GF) (1974)
364–5, 366, 367, 368
366
Swedish Penal Code (1962) 368
Switzerland
and broadcasters’ rights 490, 492,
493, 495, 496, 497, 498, 499,
504, 506
newspaper market in 336, 342
teaching exception in 395

Tades, Helmuth 344
Taiiping 415
Takeyama, L.N. 260
Tanzania
and broadcasters’ rights 492, 493,
494
and WIPO’s role 510
teaching exceptions 373–401
in Berne Convention 373, 377–80,
399
conclusions 398–400
in EU Copyright Directive 373,
380–90, 399
in EU national laws 390–95, 398–9
introduction 373–7
technical drawings 34–5
technical protection measures
actual effect of 334–5
to avoid downstream uses 386
degree of use of 387
date-users affected by 234, 456
and exceptions 178–9, 318–19, 321,
330–31, 333, 342, 351–2,
388–9, 426–30
alternative dispute resolution
(ADR) as a means of solving
disputes regarding 426,
429–30, 434–43, 446–7
national copyright laws without
ADR provisions as a means
of solving disputes 443–6
legal protection of 232, 318–21, 339
and market failure 341–2
penalties for offences against 416
and public domain 176, 178–9, 182
WPPT and 495, 507
see also digital rights management
(DRM)
technology transfer agreements 470–74
Tele-Atlas case 107
Tele-Direct (Publications) Inc v
American Business Information,
Inc 120
telephone codes 9
teletext 193
Telidon 62
temporary reproductions 381–2
territoriality of copyright 259, 374,
460–82
definition of 460–61
implications for commercialisation of
copyright works 461–3
competition law 468–75, 482
electronic copies of a copyright
work 463–8, 481–2
hard copies of copyright works
475–9
performance copyrights 479–81
text, use of 193, 203, 205
textbooks 393, 394
Thai Anti Money Laundering Act 419
Thai Copyright Act (1994) 418
Thai Optical Discs Law (2005) 418–19
Thailand
copyright piracy in 403, 417–19, 421
specialist IP court in 419, 421, 422
Théberge v Galerie d’Art du Petit
Champlain inc. 63, 64–5
Thompson v Stanhope 139
Thompson v Symonds 440
Thoms, F. 322
three-step test 73–6, 77, 233, 244, 250, 253, 340, 342–9, 354, 378
and teaching exception 385–8, 391, 392, 395
Thum, D. 467
Tigest v Reed Exposition France et Salons Français et internationaux 91, 99
time-shifting exemption 446
Tousson v Collins 58
Torremans, P. 34, 40, 44, 45, 286, 451, 462, 463, 466, 468
Tournier 260, 264
Towse, Ruth 260, 262, 278
Trade Mark Cases, The 1
trade marks
duration of protection 169, 227
folklore and 213–14
infringement 96, 97, 100, 101, 102, 467, 468
innovation policy and 61
on the internet 466–8
and public domain 176, 177
registration of 2
and reputation 55
TRIPs Agreement and 360
unlawful to reproduce 91
trade rules 77–81
trade secrets 434
Traillé, J.-P. 195
transaction costs 260, 261, 275, 285
transformations 75, 382, 390–91
translations 75, 239, 382, 390, 394
travesty 370–71
Treanor, William Michael 150
Treaty of Rome 480
Trefethen, A.E. 130
Triaille, J.-P. 88, 92
tribunal de commerce 100–101, 102
TRIPs Agreement see WTO TRIPs Agreement
Trotter, Hardy 322
Trudel P. 319
Tuma, Pavel 256, 259, 268, 280, 297
Tunis Model Law (1976) 209, 217
Turkey, and broadcasters’ rights 490, 491
Turnbull, B.H. 427
Turner, M. 189, 192, 194, 197, 199, 204, 205
typographical arrangements of published editions 10–11, 12
UK Copyright Act (1709–10) see Statute of Anne (1709–10)
UK Copyright Act (1911) 8, 9, 63
UK Copyright Act (1956) 10, 189, 191, 197
UK Copyright and Rights in Databases Regulations (1997) 13, 123
UK Copyright Designs and Patents Act (1988) 10, 191
broadcasting organisation defined in 500
and copyrightability 39
and database copyright 123
and duration of copyright 154
exceptions under 46
and fair dealing provision 322, 333
and idea/expression dichotomy 315–16
and moral rights 45, 338
‘rightholder’ in 348
rights other than copyright proper in 11
and scope of the right 140
types of work protected by 11–12, 36, 42, 48, 186, 188, 189, 196, 197, 198, 202, 204, 205
UK Department of Constitutional Affairs 433
UK House of Commons, Science and Technology Committee 324, 325
UK Patent Office 433
Ukraine, and broadcasters’ rights 492, 493, 494
Ulen, Thomas 327
Ulmer, E. 43, 44, 47, 93
UNEP 211
UNESCO 172, 175, 209–11, 509
unfair competition law 83–4
in Belgium 92–5
choice between infringement action and 107–8
in Belgium 106–7
in France 103–6, 107
cumulation of infringement action and 95, 107
in Belgium 100–103, 107
in France 95–100, 107
user agreements 225
users’ rights 65, 66, 69, 71–2
utilitarian/instrumentalist approach 67, 81
value-added services 335–6, 353–4
competition in 238–54
Van Binst, P. 191
Van Bunnen, L. 92, 93
Vassilaki, Irini 332
Vaver, D. 86
Venezuela 510
Vercken, G. 185, 193
Versailles Court of Appeal 92, 206
Victor Lalli Enterprises Inc. v Big Red
Apple Inc. 17
Video Firenze s.r.l. v SIAE, IDA 296
video games 200–201, 202, 206, 413
video recordings 321–2, 395, 477
Vincent v Software International, Schmid
etrans 206
Vinje, T. 318, 319
Vitoria, M. 15, 35, 190, 315
Volokh, E. 293
von Bernuth, W. 322
von Lewinski, S. 229, 264, 344–5, 348, 361, 426, 427, 443, 444
von Vogel, A. 265
Walter, M. 43, 443
Walter v Lane 32, 33–4, 35–6
Walterscheid, Edward C. 149, 150
Wandtke, A. 340
Warner Bros v Christiansen 477
Warwick Film Productions Ltd v
Eisinger 15
Waterlow Directories Ltd v Reed
Information Services Ltd 16–17, 19, 111, 115–16, 124
Waterlow Publishers Limited v Rose and
Another 111, 115–16, 124
Watt, R. 260
Weatherby’s 19
webcasting
collecting societies and 269, 282
reporting by 302
SCCR agenda and 497, 498, 500, 501, 502–3, 504–5, 507, 509, 512
Weber, R.H. 332, 352
World Intellectual Property Association (WIPO) (cont.):
Standing Committee on Copyright and Related Rights (SCCR) 483, 486, 487–513
territoriality concept implied in treaties of 460
Worms, Fernand 148
WTO Panel 344, 345, 346, 385, 387
WTO TRIPS Agreement
compliance of governmentally administered reward system with 303–4
copyright-oriented approach of 360–61
and idea/expression dichotomy 76, 167
and intellectual property laws in Asia 402
introduction of 77
moral rights excluded from 78
neighbouring rights in 228
original label requirement and 406
and protection of broadcasting organisations 488
and protection of compilations of facts 113
and protection of scientific research results 315
‘rightholder’ in 348
territoriality concept implied in 460, 461
and three-step test 73, 74, 233, 244, 343, 378, 385, 386
and unfair competition 84, 214
user groups and developing countries implementing 79
Yen, Alfred C. 149, 316
Zäch, Roger 352
Zimmerman, D.L. 242, 257, 287, 358, 350
Zobel, Dieter 352