Index

AB Volvo c. Erik Veng (UK) Ltd 296
ABC Rénovation v Les Maisons Barbey Maillard 165
Abrams, H. 227, 228, 230
Adams, J. 153
adhesion (standard form) contracts 174, 175, 183, 185, 189, 249, 290, 291
United States 235–6, 249
Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) 55, 56, 58, 151–2
AMC Promotion v CD Publishers Construct Data Verlag GmbH 81, 95, 276
America see United States analog databases 178, 192
Angel, J. 72
anti-circumvention provisions, Europe 191–4
nature of 194, 196–7
a posteriori and negative over-protection 219–20
and proposed model 291–6
protection overview 197–9
simultaneous protection 209–10, 217–18
additional powers and overridability of exhaustion 211
implementation in France 216–17
implementation in UK 215–16
mechanism safeguarding exceptions 212–14
see also TPMs, Europe
anti-circumvention provisions, United States 243–4
Aplin, T. 66, 72, 84, 97, 113, 118, 136, 192, 212
a posteriori and negative over-protection anti-circumvention provisions 219–20
contracts 187–90
multiple source databases 188
sole source databases 188–90
proposed model 295–6
TPMs 218–19
unfair competition 167–72
case law 167
unprotectable databases 168–72
Atari, Inc. v Games, Inc. 231
Attheraces v The British Horse Racing Board 96, 298
Autonet v Promasy 68
Autospin (Oil Seas) Ltd v Beehive Spinning 61
Bainbridge, D. 105, 136, 140
Barendt, E. 16
Baron, P. 264, 285
Bäsler, W. 294
Bastian, M. 256
Bechtold, S. 175, 193, 195, 213
Beier, F. 153
Belgium contracts, overridability of exceptions 185
Copyright Act 137
Database Act 185, 206–7, 217
substantial investment, case law 79
sui generis right, optional exceptions 137
TPMs, overridability of exceptions 206–7, 208
Bensinger, V. 53, 66, 91, 94, 113, 114
Bentham, Jeremy 12
Bently, L. 52, 106, 132, 138, 142, 287
Berger, C. 84
Berlin Online database 71, 80
Bertrand, A. 159
Beutler, S. 67, 70
BHB Enterprises Plc v Victor Chandler (International) Ltd 298
Birkinshaw, P. 16
Birnhack, M. 12, 17, 19, 20

349
The legal protection of databases

Bonito Boats Inc. v Thunder Craft Boats Inc. 225
Bonnefont, A. 169
Bouganim, V. 58, 62, 65, 252, 257, 260, 274
Bovenberg, J. 39, 72
Bowers v Baystate Technologies, Inc. 235, 236
Boyarski, J. 231
Braun, N. 213
Briarpatch Ltd., L.P. v Phoenix Pictures, Inc. 230–31
Brigid Foley v Elliott 61
British Horseracing Board v William Hill extraction 103, 105
indirect taking 102
infringement 111–12, 113, 117, 277
nature of investment 74–5
object of investment 93, 94, 95–6, 97, 98
substantiality of investment 77, 85
term of protection 138, 142
Brookman, R. 230
Brown, E. 236
browsing 104, 146
Brüning, A. 164
Burk, D. 213
Burns, P. 153
Burrell, R. 30, 34
Burst, J.-J. 165, 171
Buydens, M. 59, 63, 64, 65, 66, 84, 104, 170, 171, 180, 181, 182, 183, 261
Byrt, S. 153
C-Netz case 70, 114
Cadbury Schweppes Pty Ltd v Pub Squash Pty Ltd 153
Cadrempli v Keljob 71, 77–8, 112, 161–2, 166, 277
Calabresi, G. 253, 262
Cantor Fitzgerald International v Traditional Ltd 85
Cap Equilibre & M. Lairis V Milloz 71
Capron, C. 64, 83, 112
Centrafarm v Sterling Drug 186
Centrafarm v Winthrop 186
Chalton, S. 63, 69, 70, 72, 100, 104, 127, 128
Chamberlain Group v Skylink Techs 244
Cheney Bros v Doris Silk Corp. 227
Chicago School of Economics 22
civil liability 52, 169
click-wrap contracts 175
Cohen, J. 213
Coleman, A. 30, 34
Colicchio, R. 226
collection, definition 55–7
Colston, C. 112, 116
Comité national olympique et sportif français v Groupement d’achat des centres Leclerc 160
competition law 250
and intellectual property rights relationship 27–8
and proposed model 296–8
compulsory licenses 262, 263, 280–82, 284
Computer Associates Int’l, Inc. v Altai, Inc. 228
computer programs 69–70, 72, 144, 182–3, 197, 273–4
Consorzio italiano della componentistica di ricambio per autoveicoli & Maxicar v Régie nationale des usines Renault 296
Construct Data Verlag v Reed Expositions France 71, 78, 161, 162
Consultant Immobilier v Aptitudes Immobilier 163, 289
contracts, Europe
adhesion contracts 174, 175, 183, 189, 249
fully negotiated contracts 174–5, 185, 189
a posteriori and negative over-protection 187–90
multiple source databases 188
sole source databases 188–90
simultaneous protection 175–7
multiple source databases 178–9
sole source databases 179
overridability of exceptions 180–85
overridability of exhaustion principle 185–7
contracts, United States 234–7
adhesion contracts 235–6, 249
fully negotiated contracts 234–5
Cook, T. 45
Copinger, W. 105, 111
Copyright Act, United States 227–8, 229, 234, 239, 242–3
Copyright Directive 7, 133, 134, 180, 200, 205, 209
Article 6 191, 197–8, 215, 220, 291
Cornish, W. 52, 63, 114, 139, 141, 152, 153
Credinfor v Artprice.com 77, 114, 275
criterion for adequate database protection 34–40
analysis of interests protected 38–40
human rights approach 36–7
over-protection 37–8
Cundiff, V. 229
D’Andrea Tyson, L. 148, 261–2, 285
data, definition 58–9, 145
database, definition 48
Article 1 54, 67, 339
Article 2 68–9, 339
Article 3 340
Article 4 340
Article 5 340–41
Article 6 341–2
Article 7 48, 51, 85, 100–19, 127, 128, 277, 342–3
Article 8 48–9, 117, 118, 119, 123, 126–9, 176, 278, 343
Article 9 48, 49, 119, 129–37, 343–4
Article 10 137–44, 344
Article 11 49, 344–5
Article 12 49, 345
Article 13 49, 150, 191, 345
Article 14 346
Article 15 49, 119, 121, 127, 176, 179, 199–200, 212, 346
Article 16 347
criticism of 147–9
database, definition 48
objectives of 47
see also European Court of Justice
(ECJ) interpretation of Directive;
Explanatory Memorandum to Directive
database protection, criterion for adequate protection 34–40
analysis of interests protected 38–40
human rights approach 36–7
over-protection 37–8
Datenbankeigenschaft von
Hyperlinksammlungen 81–2, 87–8
Davidson & Assoc. v Jung et al. 235, 236
Dayan, L. 257
De Caluwé, A. 250
De N.V. Drukkerij ‘De Spaarnestad’ v Leesinrichting ‘Favoriet’ 186
De Telegraaf v NOS 70
De Visscher, F. 127, 207, 213, 214
Delcorde, A.-C. 250
Denda v KPN & PTT Telecom 94
Denicola, R. 239
Denmark, Copyright Act 217
Designer’s Guild Ltd v Russell Williams (Textiles) Ltd 89
Desjeux, X. 165, 170
Deutsche Grammophon v Metro 186
Dietz, A. 250
digital databases 191, 192–3
digital lock-up 193
Digital Millennium Copyright Act (DMCA) 196, 239, 240–41, 242, 243, 244
Directive 96/9/EC see Database Directive
disharmonization of European database protection 5, 126, 134, 137, 148, 185, 218, 220
The legal protection of databases

Distribution Casino France v Ratreau 157
Djavaherian, D. 228, 230, 256
DMCA see Digital Millennium Copyright Act
Dochy & Open Tours v Nice Travelling 72
Dommering, E. 39, 250, 280
Doutrelepont, C. 46, 100
Downing, R. 103, 104, 127
Dreier, T. 17, 269
Dumortier, J. 109
Dworkin, G. 152, 153
dynamic databases 138, 140, 143, 288
Easton, E. 17, 19, 21, 282
ECHR see European Convention on Human Rights
ECJ see European Court of Justice (ECJ)
interpretation of Directive
economic analysis of copyright 25–30, 34, 184, 188, 202–3
economic analysis of information goods 37, 184
economic analysis of law 22–3
economic justification for copyright 11, 22–30, 32–3
economic parasitism see parasitism
Economist, The 178
Edirom v Global Market Network 158
Editions Néressis v France Télécom Multimédia Services 71, 112, 162
Eldred v Ashcroft 19
electronic databases 54, 55
Électronische Pressespiegel 70, 114
eligible intangible 265
Encyclopédie Douanière v Conex et Agence fiscale 165
enforceability of property rights 24
enrichment without cause 171
Erie Railroad v Tompkins 227
Europe, contracts
adhesion contracts 174, 175, 183, 189, 249
fully negotiated contracts 174–5, 185, 189
a posteriori and negative over-protection 187–90
multiple source databases 188
sole source databases 188–90
simultaneous protection 175–7
multiple source databases 178–9
sole source databases 179–87
overridability of exceptions 180–85
overridability of exhaustion principle 185–7
Europe, TPMs and anti-circumvention provisions 191–4
anti-circumvention provisions, nature of 194, 196–7
a posteriori and negative over-protection 218–20
anti-circumvention provisions 219–20
TPMs 218–19
protection overview 197–9
simultaneous protection 199–218
anti-circumvention provisions 209–10, 217–18
additional powers and overridability of exhaustion 211
implementation in France 216–17
implementation in UK 215–16
mechanism safeguarding exceptions 212–14
TPMs 199–209
additional powers and overridability of exceptions 200–208
overridability of exhaustion principle 208–9
TPMs, nature of 194–7
Europe, unfair competition 46, 150–52
parasitism 152–8
France 153–8
case law 157–8
conditions of application 155–6
legal basis 154–5
United Kingdom 152–3
a posteriori and negative over-protection 167–72
France, case law 167
unprotectable databases 168–72
simultaneous protection 159–67
choice of protection 164–7
possibility of 159–64
European Convention on Human Rights (ECHR) 14–15, 16, 17–19, 20
European Court of Justice (ECJ) interpretation of Directive 50–51
Article 7.5 117–18, 119, 128, 146
collection 56, 57
database definition 54, 61
extraction 101, 102, 103, 107, 205
independence requirement 62, 63
infringement 109–11
insubstantial part 110, 111, 112
object of investment obtaining 92, 93–4, 96
presenting 97–8
verifying 97
originality criterion 65
perpetual protection 141
quantitative and qualitative assessment 91, 109–10, 111–12
reutilization 101, 102, 103, 205
substantial investment 275
substantial part 109–10, 111, 112, 113
systematic or methodical arrangement 64
see also Database Directive exceptions
copyright 115, 282–3
overrideability of contracts 180–85
overrideability of, TPMs 200–208
private copying 279, 293
proposed database protection model 278–84
safeguard mechanism, anti-circumvention provisions 212–14
sui generis right 48–9, 119–37
lawful user 48–9, 120–26
lawful acquirer 123–4, 125
licensee 121–3
relying on statutory or contractual exceptions 120–21, 125
mandatory exception and users’ obligations 126–9
optional exceptions 129–37
Article 9 129–30
implementation in France 134–5
implementation in UK 134, 135–6
private extraction 130–31
public security or administrative or judicial procedure 133–4
teaching and research 131–3
exclusivity of property rights 23
exhaustion principle 48, 106, 107, 185–7, 188, 208–9, 277, 293
Explanatory Memorandum to Directive 52, 53, 56, 59, 61, 64, 109, 115, 148
lawful acquirement 123
lawful user, definition 120
private use 130
see also Database Directive extraction 48, 100–105, 107, 146
exceptions 119–37
lawful user 48–9, 120–26
lawful acquirer 123–4, 125
licensee 121–3
relying on statutory or contractual exceptions 120–21, 125
mandatory exception and users’ obligations 126–9
optional exceptions 129–37
Article 9 129–30
implementation in France 134–5
implementation in UK 134, 135–6
private extraction 130–31
public security or administrative or judicial procedure 133–4
teaching and research 131–3
infringement
extraction of insubstantial parts 117–19
extraction of substantial parts 109–17
proposed model 279–80
fair use 213, 241, 242, 280
Fallenböck, M. 239
Feist Publications v Rural Telephone Service Co. 2, 9, 29, 45, 229, 265
films 61–3, 69, 72, 86–7
financial investment 73, 74
Fixtures Marketing Ltd v Oy Veikkaus AB 92, 93, 94
Fixtures Marketing v AB Svenska Spel 92, 93, 94, 117
France access to government information 16
The legal protection of databases

anti-circumvention provisions 216–17
contracts 184–5
Intellectual Property Code 207, 219
sui generis right 50
exceptions, implementation 134–5
substantial investment, case law 76–8, 79–81
TPMs 207, 208
unfair competition (parasitism) 153–8, 252
case law 157–8
conditions of application 155–6
legal basis 154–5
a posteriori and negative
over-protection
case law 167
unprotectable databases 168–72
simultaneous protection 159–67

France Telecom v MA Editions 71, 74, 76–7, 89, 161, 269, 274, 275
Fred Wehrenburg Circuit of Theatres, Inc. v Moviefone, Inc. 230
free competition 34–5
free movement of goods and services 185–6
free-riding 3, 46
Freedman, C. 105, 136, 272, 302
freedom of expression 11, 14–15, 18, 36, 171
Freedom of Information Act 2000 (FOIA), UK 16
Freedom of Information Act, US 16
freedom of speech see freedom of expression
freedom to copy 34, 154, 168–71
Frequin, M. 297
Frischling, G. 236
Fujichaku, R. 229, 230, 256
fully negotiated contracts 174–5, 185, 189
United States 234–5
fundamental freedoms 180–81, 182

Galli, P. 59, 61
Gaskin v United Kingdom 16, 17, 18
Gassner, U. 210, 215
Gaster, J. 58, 62, 69, 84, 103, 114, 133, 251
Gaudrat, P. 73, 74, 97, 98, 104, 105, 108, 125, 131, 136, 274, 280
Gautier, P.-Y. 163
Geiger, C. 12, 13, 17, 20, 21, 22, 32, 36, 272, 279, 280, 297
Geneva Phonograms Convention 258
Germany
Copyright Act 186, 217
substantial investment, case law 77, 80, 81–3
Ginsburg, J. 201, 230, 231, 233, 241, 242, 244, 280, 281
Glock France v Bécheret 165
Goethals, P. 109
Golaz, E. 154, 159, 165, 172
Goldstein, P. 89
Gordon, W. 25, 26, 27, 29, 265–7
government information, access to see public’s right to information
Greece, Copyright Act 217
Green Paper on Copyright and Challenge of Technology–Copyright Issues Requiring Immediate Action 44, 47, 58, 61
Greenbaum, D. 232, 257, 263, 274
Grosheide, W. 84, 111, 120, 123, 250
Group Van Hecke v Infobase Europe & Help 70
Groupe Miller Freeman v Neptune Verlag 71, 78, 161
Groupe Miller Freeman v Tigest Communication 71, 74, 78, 90, 161
Groupe Moniteur v Observatoire des Marchés Publics 81, 90, 167, 275–6, 290
Grützmacher, M. 62
Guerlais v Tillaud Boisouvres 156
Guerra and Others v Italy 17–18
Guibault, L. 12, 13, 19, 22, 32, 176, 177, 180, 183, 228, 236, 282, 290
Hagen, S. 83, 84, 90
Hamilton, M. 17
Handelsblatt v Paperboy 107
harmonization of database protection 2–3, 47, 88
lack of 5, 126, 134, 137, 148, 185, 218, 220
Harper and Row Publishers Inc. v Nation Enterprises 19
Havelange, F. 127
Heide, T. 10, 96, 180, 192, 199, 205, 213, 234, 291
Index

Helberger, N. 195, 196, 201
Henning-Bodewig, F. 151, 250
Hertel v Switzerland 18, 19
Hertin, P. 86
Hit Bilanz 62, 71, 102, 113
Horton, A. 152, 153
Hovarth, K. 229
Hugenholtz, P.B. 32, 44, 55, 64, 67, 72, 91, 93, 94, 97, 98, 112, 122, 127, 136, 139, 166, 271, 297
Hughes, J. 256
human investment 73–4
human rights 14
human rights approach to database protection 36–7, 184, 188
human rights justification for copyright 11, 13–22, 32–3
Hunsucker, G. 232
idea/expression dichotomy in copyright law 19, 89
imitation see parasitism
IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG 283, 297
incentive justification for copyright see utilitarian justification for copyright
indirect taking 102
infringement 48, 107
extraction or reutilization of insubstantial parts 117–19
extraction or reutilization of substantial parts 109–17
and parasitism, distinction 161
and unfair competition, choice between 164–7
infringement test 146
insubstantial part 109, 110, 111, 115, 121
extraction and reutilization 117–19
proposed model 277, 280
intangibles 253–5
intellectual property rights
and competition law, relationship 27–8
and public sphere 202
unfair competition comparison 249–50, 269–70
and competition law, relationship 27–8
and public sphere 202
unfair competition comparison 249–50, 269–70
advantages 267–8
disadvantages 268
advantages 267–8
v diminution 268
Internet 125
investments in database creation 9–10, 12, 33, 35, 36, 45, 46
definition 73–5
see also substantial investment, sui generis right
Itac v Equipmedical & Jacques L 70, 79, 163, 290
Jataka & Pierre M. v EIP 71, 162–3, 289
Jean-Louis H. v Net Fly 166
Jenkins, J. 97
Jomouton, Y. 74, 104, 119
justifications for copyright protection 201–2
and economic 11, 22–30
human rights 13–22
naturalist 11–12
public sphere 202
utilitarian 12–13
Kamperman Sanders, A. 18, 19, 20, 30, 154, 225, 252, 254, 269, 274
Kappes, F. 123
Karjala, D. 236
Karnell, G. 105, 112, 143
Kaye, L. 98
Keljob v Cadremploy 71, 166
Kewanee Oil Co. v Bicron Corp. 228
key escrow system 213
Khadder, N. 230
Kidnet v Babynet 70, 82–3
Koelman, K. 195, 196, 201
Kon, S. 10, 96
Koninklijke KPN N.V. v XBASE Software Ontwikkeling B. 71
Koninklijke Vermande v Bojkovski 71
Kötz, H. 4
Koumantos, G. 100, 108, 121, 122
Kur, A. 184, 272, 279, 280, 291, 296
liability rule or property rule 253–5
restitution 265–7
unfair competition-based protection 255–9
advantage 268
disadvantages 268–9
see also sui generis right
International News Service v Associated Press (INS) 226–7, 267
Internet 125
investment in database creation 9–10, 12, 33, 35, 36, 45, 46
definition 73–5
see also substantial investment, sui generis right
The legal protection of databases

Laddie, H. 98, 116, 118, 139
Laffineur, J. 74, 104, 119
Landes, W. 25–6, 27, 187, 188, 203
lawful user 48–9, 120–26, 146–7, 278
lawful acquirer 123–4
licensee 121–3
user relying on statutory or contractual exceptions 120–21, 125
Le Monde v Microfor 44
Le Serveur Administratif v Editions Législatives 165–6
Le Tourneau, P. 165, 169, 170
Leander v Sweden 16, 17
Ledger, M. 197
Leesporteufeille case 186
Lehmann, M. 35, 84
Leistner, M. 62, 72, 84, 85–6, 87–8, 91, 114, 131, 139, 140
Lemley, M. 175
Léonard, T. 293
Lessig, L. 195, 196
Leurquin, X. 250
Levêque, F. 23, 24, 27
Lexmark Int’l Inc. v Static Control Components Inc. 240, 244
liability rule system 253–5, 262
Lipton, J. 136, 252, 262–4, 285, 287
Llewelyn, D. 153
Lucas, A. 73, 100, 116, 127, 135, 165, 193, 216, 219, 252
Lynch Jones Ryan, Inc. v Standard & Poor’s and the McGraw Hill Companies, Inc. 230

Mackaay, E. 22, 24, 26
Macmillan, F. 17
Macmillan Patfield, F. 21, 32
Maeyaert, P. 103
Maggis, P. 236
Magill case 96, 296, 297
malcompetitive copying 265, 267
Mallet-Poujol, N. 90, 107, 112, 127, 135, 165, 167, 252, 256
Mankiw, N. 23, 24, 25
Mansani, L. 61
market economies 23–5
market failure 25, 181, 183
Marks, D. 213
Markstudien case 115
Mars UK Ltd v Teknowledge Ltd 68, 70
Mason, A. 17
material investment 73, 75
materials, definition 59–60, 145
Matesky, M. 239
Maurer, S. 72, 271
McCarthy, J. 225, 226
McGee, S. 228, 230
McGinley and Egan v United Kingdom 18
McManis, C. 140, 249
Melamed, A. 253, 262
Ménière, Y. 23, 24, 27
Merges, R. 253, 254
Metro v Cartier 158
Michaux, B. 127, 207, 213, 214
microeconomics 22–3
Mill, John Stuart 12
misappropriation tort 4, 150, 225–31, 256–7, 268, 289
inadequacy of 231–2
see also unfair competition
monopolies 35, 38, 87, 188, 195
sole source databases 94, 177, 179
monopolization of information 82, 85–6, 98, 100, 107, 116, 146
Morris Communications Corp. v PGA Tour, Inc. 231
multiple source databases 39, 200, 281, 290, 295
and contracts 178–9, 188, 190, 235–6
museums and galleries 87, 282, 284
Myers, G. 230

National Basketball Association v Motorola (NBA) 229–30, 231
National Car Rental Systems v Computer Associates 235
naturalist justification for copyright 11–12
negative and a posteriori over-protection
anti-circumvention provisions 219–20
contracts 187–90
multiple source databases 188
sole source databases 188–90
proposed model 295–6
TPMs 218–19
unfair competition 167–72
case law 167
unprotectable databases 168–72
neighbouring rights 10, 52, 53, 54, 171
Index

Netanel, N. 18, 30
Netherlands
  contracts, overridability of exhaustion 186
  copyright law 2
  spin-off theory 94
  substantial investment, case law 78
News Invest v PR Line 166
Newspaper Licensing Agency Ltd. v Marks & Spencer Plc 98
Nichols v Universal Pictures Corp. 89
Nimmer, D. 208, 229, 236, 239
non-excludable goods 24
non-protected databases, examples 69–72
non-rival goods 24
Nordemann, W. 86
normal exploitation 117
NVM v De Telegraaf 71
NVM v Zoekallehuizen.nl. 95

OCP Répartition v Salvea 72, 163
off-line databases 125, 286–7
on-line databases 125, 287
Onsrud, H. 72, 271
original expression 177, 179
over-protection 3–4, 5, 150, 223, 247, 248
  by accumulation of protections 37–8, 150
a posteriori and negative
  contracts 188–9, 190
  TPMs 219
  unfair competition 171, 173
remedies 271, 276, 289, 290, 291–2, 299
simultaneous
  anti-circumvention provisions 209, 211, 214, 217–18
  contracts 175, 183–4, 185, 187
  TPMs 206, 208, 209
  unfair competition 164, 167, 172, 268
sui generis right 43–4, 58, 64, 100, 144–5, 146, 147
exceptions 126, 131, 133, 134, 136, 137
extraction 107
reutilization 107–8
substantial investment 87, 88, 90, 91, 98
term of protection 138, 140–41
United States
  anti-circumvention provisions 245
  contracts 236, 237
  TPMs 238, 244
parasitism 4, 150, 152–8, 252–3, 268, 289
France 153–8
  case law 157–8
  conditions of application 155–6
  legal basis 154–5
United Kingdom 152–3
see also unfair competition
perpetual protection 140, 141–2, 218, 263, 285–8
Perrit, J. 213
Philadelphia Eagles Football Club, Inc. v City of Philadelphia 231
Phillips, J. 10, 21, 40
Pollaud-Dultan, F. 84
Pollstar v Gigmania Ltd. 230
Posner, R. 25–6, 27, 187, 188, 203
Powell, M. 68, 141
PR Line v Newsinvest 71, 79–80, 81, 89, 111, 120, 125, 127, 277
pre-emption 154, 164, 227–9
Precom, Ouest France Multimedia v Directannonces 115, 162
presenting 97–8
private copying exception 279, 293
private extraction 130–31
ProCD v Zeidenberg 236
productive uses 26, 29
property rights 22–5
property rule and liability rule systems, comparison 253–5
proposed database protection model 271–2, 298–9
characteristics of the right 273
exceptions 278–84
exclusive rights 276–8
relationship with other laws 289–98
  competition law 296–8
  contracts 290–91
  TPMs and anti-circumvention provisions 291–6
unfair competition 289
subject-matter, definition 273–4
substantial investment 275–6
term of protection 284–9
protected databases, examples 69–72
public goods 24–5
public interest 31, 32, 37, 279, 280
public lending 101, 108, 277
public sphere justification of copyright 201–2
public’s right to information 14, 15–19, 20–21, 36, 37, 184, 279–80, 285, 290
Puttemans, A. 250
Quaedvlieg, A. 57, 60, 63, 64, 66, 67
qualitatively substantial investment 91–2
quantitatively substantial investment 91
Quinn, T. 72
Radio Telefís Eireann (RTE) & Independent Television Publications Ltd (ITP) v Commission (Magill) 96, 296, 297
Raue, P. 66, 91, 94, 113, 114
reutilization 48, 100–103, 105–9, 146
exceptions 119–37
lawful user 48–9, 120–26
lawful acquirer 123–4, 125
licensee 121–3
relying on statutory or contractual exceptions 120–21, 125
mandatory exception and users’ obligations 126–9
optional exceptions 129–37
Article 9 129–30
implementation in France 134–5
implementation in UK 134, 135–6
private extraction 130–31
public security or administrative or judicial procedure 133–4
teaching and research 131–3
infringement
reutilization of insubstantial parts 117–19
reutilization of substantial parts 109–17
proposed model 279–80
RealNetworks, Inc. v Streambox, Inc. 241
recordings of musical performances 57–8, 75, 85
Reese, R. 240, 241
registration system 263, 264, 286–9
Reichman, J. 43, 112, 144, 232, 254, 255, 256–8, 284
Répartition v Salvea 289
reproductive uses 26–7, 29
restitution 265–7, 269
Ricketson, S. 21, 32
Ricordi & Co. v Haendler 228
right to access government information see public’s right to information
right to freedom of expression see freedom of expression
right to information see public’s right to information
right to know 19
see also public’s right to information
Robertson, A. 152, 153
Rojo R. v Guy R. 106–7
Roox, K. 103
Rothchild, J. 38, 193, 206, 218, 219
Röttinger, M. 59
Roubier, P. 159
Roush, C. 25
Ryan, K. 230
Samuelson, P. 43, 112, 144, 193, 232, 241, 255, 256–8, 284
Sanks, T. 55, 256, 273
Schmidt-Szalewski, J. 152, 165
Schricker, G. 151, 250
Sedley, S. 17, 18
Sellars, C. 213, 294
Sherman, B. 52, 106, 132, 138, 142, 287
Sherry, E. 148, 261–2, 285
shrink-wrap contracts 175
simultaneous protection
anti-circumvention provisions 209–10, 217–18, 292–3
additional powers and overridability of exhaustion 211
implementation in France 216–17
implementation in UK 215–16
mechanism safeguarding exceptions 212–14
contracts 175–87
multiple source databases 178–9
sole source databases 179–87
overridability of exceptions 180–85
overridability of exhaustion principle 185–7
TPMs 199–209, 292
additional powers and overridability of exceptions 200–208
overridability of exhaustion principle 208–9
unfair competition 159–67
choice of protection 164–7
possibility of 159–64
Sirinelli, P. 135, 166, 193, 210, 216, 219, 242
slavish copying see parasitism
social welfare 3–4, 12–13, 23, 26, 27, 35, 188
Software Directive 67, 68–9, 120, 123–4, 125, 144, 274, 291–2
sole source databases 39, 96, 100, 236
anti-circumvention provisions
simultaneous protection 209–18
additional powers and overridability of exhaustion 211
mechanisms safeguarding
exceptions 212–14
contracts
a posteriori and negative protection 188–90
simultaneous protection 179
overridability of exceptions 180–85
overridability of exhaustion principle 185–7
TPMs 192
simultaneous protection 199–218
additional powers and overridability of exceptions 200–208
additional powers and overridability of exhaustion 208–9
Sonacotra v Syndicat Sud Sonacotra 71, 80, 81
sound recordings 54, 57–8, 86–7
Speyart, H. 59, 60
spin-off databases 189
spin-off theory 94
Spot v Canal Numedia 70, 74, 79, 90
standard form (adhesion) contracts 174, 175, 183, 185, 189, 249, 290, 291
United States 235–6, 249
statutory licenses 280, 281–2, 284
Stemar v Free Record Shop 186
Sterling, J.A.L. 11
Storage Technology Corp. v Custom Hardware Engineering & Consulting, Inc. 244
Strowel, A. 15, 18, 20, 22, 23, 25, 29, 31, 32, 64, 84, 97, 100, 115, 133, 169, 193, 214
Studer, M. 256
substantial change 49, 137, 139, 143, 286
substantial investment, sui generis right 56, 72–3, 145, 148
infringement 111, 112, 113, 116, 146
post sui generis right term 139, 140–41, 142–3
proposed model 275–6
sui generis right
nature of 73–5
object of investment 92, 98–9
obtaining 92–7
presenting 97–8
verifying 97
object of sui generis right 99–100
quantitative or qualitative evaluation 91–2
substantiality
case law 76–83
low level 80–81, 83–91
substantial part 109–10
extraction and reutilization 109–17
proposed model 273, 277, 279
sui generis right 2–3, 10, 43–4, 50–51, 144–9, 259–60
adequacy 144, 145–7
aim 47
database, definition 54–72
any form 54–5
collection 55–7, 59–60
exclusion of computer programs 67–9
inclusion of materials 69
independence 61–4
individual accessibility 65–7
The legal protection of databases

protected and non-protected databases, examples 69–72
systematic or methodical arrangement 64–5
works, data or other materials 57–61
evaluation 272
exceptions 48–9, 119–37
lawful user 48–9, 120–26
lawful acquirer 123–4, 125
licensee 121–3
relying on statutory or contractual exceptions 120–21, 125
mandatory exception and users’ obligations 126–9
optional exceptions 129–37
implementation in France 134–5
implementation in UK 134, 135–6
private extraction 130–31
public security or administrative or judicial procedure 133–4
teaching and research 131–3
infringement 48, 109–19
extraction or reutilization of insubstantial parts 117–19
extraction or reutilization of substantial parts 109–17
nature of the right 51–4
as neighbouring right 53, 54
over-protection 43–4, 64, 144–5, 146, 147
proposed model 298–9
protection overview 47–50
reasons for introduction 44–7
rights 100–108
extraction 48, 100, 101–5, 107
public lending 101, 108
reutilization 48, 100, 101, 105–8
substantial investment
nature of 73–5
object of investment 92, 98–9
obtaining 92–7
presenting 97–8
verifying 97
object of the sui generis right 99–100
quantitative or qualitative evaluation 91–2
substantiality
case law 76–83
low level 80–81, 83–91
term of protection 49, 137–44, 147
Sullivan, A. 148
Suthersanen, U. 123, 131
SV on line GmbH v Net-Clipping 107
sweat of the brow copyright 1, 3
Syllepsis v Wolters Kluwer 71
tagging of data 286–7, 289
tangible materials 60–61, 72, 145
teaching and research exception 131–3
technological protection measures see TPMs
Tele-Info CD 66, 74, 77, 275
term of protection, sui generis right 49, 137–44, 147
proposed model 284–9
Tessensohn, J. 257
Thakur, N. 89, 107, 148, 260
theory of property rights 22–5
Tian, Y. 288
Tiercé Ladbrooke SA v Commission of the European Communities 297
Tigest v Reed Exposition France et Salons Français et internationaux 71, 74, 78, 90, 158, 162
Torremans, P. 20, 21
Towse, R. 249
TPMs, Europe 191–4
definition 198
examples 194
legal protection of 197–8
nature of 194–7
a posteriori and negative over-protection 218–19
and proposed model 291–6
protection overview 197–9
simultaneous protection 199–209
additional powers and overridability of exceptions 200–208
overridability of exhaustion principle 208–9
see also anti-circumvention provisions, Europe
TPMs, United States 238–45
anti-circumvention provisions,
adegacy of 243–4
protection overview 239–43
TPMs, adequacy of 243
trade mark rights 141
tragedy of the anti-commons 28–9, 203, 281
transferability of property rights 23–4
translation 105, 107
travaux préparatoires 207, 240
Triaille, J.-P. 64, 83, 100, 169, 197
TRIPs agreement 55, 56, 58, 151–2
Tulkens, F. 15, 18, 20
Turnbull, B. 213
Übernahme einer Gesetzammlung im Internet 71, 74, 76, 77

Uhlir, P. 256
under-protection 3–4, 257, 268, 269
misappropriation 225, 232, 247, 268
remedies 271, 291–2
sui generis right 55, 146
term of protection 138
verification 97
United States
anti-circumvention provisions 245
contracts 235, 247
TPMs 244
unfair competition and intellectual property comparison 249–50,
269–70
differences between 250–53
intellectual property-based protection 259–65
advantages 267–8
disadvantages 268
liability rule or property rule 253–5
proposed models 256–9
restitution 265–7
unfair competition-based protection 255–9
advantage 268
disadvantages 268–9
unfair competition, Europe 46, 150–52
parasitism 152–8
France 153–8
case law 157–8
conditions of application 155–6
legal basis 154–5
United Kingdom 152–3
a posteriori and negative over-protection 167–72
France, case law 167
unprotectable databases 168–72
simultaneous protection 159–67
choice of protection 164–7
possibility of 159–64
unfair competition laws 46, 89
unfair competition, United States 225, 232–3
misappropriation tort 225–31
inadequacy of 231–2
Union Nationale des Mutualités Socialistes v Belpharma Communication 70, 74, 76, 79
United Kingdom
anti-circumvention provisions 196, 215–16
contracts 184–5
database protection 2, 45
Freedom of Information Act 16
parasitism 152–3
sui generis right 50
exceptions, implementation 134, 135–6
substantial investment, case law 77
TPMs 220
unfair competition 152–3
United States
contracts 234–7
adhesion contracts 235–6, 249
fully negotiated contracts 234–5
copyright 14–15, 19–20
Copyright Act 227–8, 229, 234, 239, 242–3
database bills 271, 273
Freedom of Information Act 16
right to know 15–16, 19
TPMs and anti-circumvention provisions 197, 238–45
anti-circumvention provisions, adequacy of 243–4
protection overview 239–43
TPMs, adequacy of 243
unfair competition 225, 232–3
misappropriation tort 225–31
inadequacy of 231–2
United States v Elcom Ltd. 192, 241
Universal City Studios Inc. v Corley 25, 192, 241
Universal City Studios Inc. v Reimerdes 240, 241
University of London Press v University Tutorial Press 85
unjust enrichment 171, 265
unreasonably prejudice 117
Urheberrechtsverstoß durch Internet-Suchdienst 71, 80
utilitarian justification for copyright 12–13
Van Daele v Romme 44–5
van Dijk, P. 16
van Hoof, G. 16
Vanhees, H. 116, 133, 134, 140
Vanovermeire, V. 120, 121, 122, 123, 124
Vault v Quaid 236
verifying 97
Vermietung von Tonträgern 186
Vinje, T. 33, 181
Visser, D. 59, 60
Vivant, M. 116

Waelde, C. 99, 128
Waterlow Directories v Reed Information Services 265
Waterlow v Rose 265
Wegener v Hunter Select 71, 114
Weightman, E. 69, 118
Westkamp, G. 68, 86, 87, 93, 104, 116, 119
Williams, A. 140
Williams, M. 1
Willsher v United Kingdom 17
WIPO Copyright Treaty (WCT) 55
Wolken, J. 255, 263, 274, 287, 288, 302
Worthy, J. 69, 118

Zusammenstellung von Daten aus Chart-Listen 71, 113
Zweigert, K. 4