
Index

- A. & E. Plastik Pak v. Monsanto* 365
Abbreviated New Drug Applications (ANDAs) 467–8, 469, 472, 481–2, 488
Abramowicz, M. 144, 145–6
Abrams, H.B. 323
absolute liability rules 185–6
absolute secrecy, lack of 160
access
 environmental law 456–8
 protecting a commons 238–40
 and trade secrecy in expression 310–30
accountability 406, 407
 search engines, secrecy and 384–92
 see also transparency
active course of conduct 61
actual secrecy 57
actual use 166–7
Adidas 289
advertising, online 392–3
aerial photography 58, 113–14, 116–17, 124–5, 160, 230
affirmative measures 61, 73
agency expertise 383–4, 392–8, 404
aggregation of data 487–8
Agreement on Trade-Related Aspects of Intellectual Property Law *see* TRIPS Agreement
agricultural traditional knowledge 510
Akerlof, G. 455
Albania 583
Allen, R.C. 203, 209, 213, 214
Alliance for Taxpayer Access 425–6
Amazon 403
ambit of protected subject matter 144, 145–7
American Bar Association, Patent, Trademark and Copyright (PTC) Section 554
American Intellectual Property Law Association (AIPLA) 105
American Law Institute 19, 20, 21, 22, 116, 553
American Tobacco Co. v. Werckmeister 306
Amoco Prod. Co. v. Laird 412, 413
Amunson, J.R. 395
analytical framework for antitrust and trade secrets 366–79, 380
 application of general principles 372–9
 monopoly firm conduct 375–9
 price and territorial license restrictions 372–5
 general principles 366–72
 respect the bargain 371–2
 trade secret distinctiveness 366–9
 trade secrets' legal properties 369–71
ancillary restraints 347, 370
Andean countries 588
Anderman, S.D. 144
Anderson, C. 396
Anell Draft 550–51
Animal Welfare Act 426, 427
antitrust enforcement guidelines 338–9
antitrust law 332–80
 analytical framework for antitrust and trade secrets 366–79, 380
 antitrust treatment of trade secrets 339–66
 current law 350–65
 historical background 339–50
 monopolies 335–6, 358–65, 375–9
 restraints of trade 344–50, 350–58, 372–5
Aoki, K. 237–8
Apache help-line websites 208–9
appellate courts' *de novo* reviews 296
Apple Computer 282
application costs 173–4
application programming interfaces (APIs) 378–9
apprenticeships 174

- appropriability 336
- Argentina 573
- Aronson v. Quick Point Pencil Co.* 375
- Arrow's Information Paradox 127, 223
- Article 39 of the TRIPS Agreement
 - 141, 142, 186
 - Article 39(3) 516, 565–6, 568–82, 589
 - interpretation 570–81
 - indigenous innovation 501–2, 510, 512, 513, 514–20, 521, 525, 534
 - negotiation history 539–52, 561, 564–5
 - drafting phase 541, 549–52
 - early phase 541–5
 - mid-term phase 541, 546–9
 - and the UTSA on which it is based 186, 537–9, 552–62
 - impact of pre-emption principles 563–5
 - limitations on the scope of U.S. trade secret law and 552–63
- Associated Press (AP) 226–7
- Attorney General 406
- attorneys 83, 87, 98, 99
 - networks among like-minded 105–6
 - problems with the intellectual property bar 103–4
- Austin, G.W. 303
- Australia 400, 568
 - Pitjantjatjara People 511–13
- Auto Channel, Inc. v. Speedvision Network, LLC* 32, 36
- automated decision systems 398–400

- bad faith litigation 363–5
- Baidu 385
- Balboa Ins. Co. v. Trans Global Equities* 308
- ballpoint pens 189
- bargain
 - antitrust law and trade secrets
 - lack of a disclosure bargain 368–9
 - respecting the bargain 371–2
 - copyright 306–7
- Bartnicki v. Vopper* 292–4
- Basheer, S. 579
- Basic Framework of GATT Provisions on Intellectual Property* 542–4, 545, 561
- Battelle, J. 385, 391
- Behr, C. 455, 457
- Ben-Atar, D.S. 164
- benefit sharing agreements 526–8
- Berkey Photo, Inc. v. Eastman Kodak, Inc.* 358–60, 378
- Berne Convention 303, 326–7, 503
- bilateral cross-licenses 246, 255, 265
- biodiversity 497
- bioequivalence 467–8, 481
- BioForge 235–8, 240, 263
- biogenetic materials 526–8
- Biological Open Source (BIOS) initiative 235–7, 263
- BioMoby messaging standard 254
- biotechnology
 - open 235–7, 246–66
 - rise of trade secrecy protection in 248–50
- BioZulua database project 532, 533–4
- Birrell, A. 323
- Bisphenol A (BPA) 451, 452
- black hat SEO 387–8, 389–91
- Blackstone, W. 101
- Blair, R.D. 159
- blast furnaces 203, 209
- Bodenhausen, G.H.C. 515–16
- BondPro Corp. v. Siemens Power Gen, Inc.* 59
- Bone, R.G. 109, 121, 127–8, 131, 134, 146, 148, 415
- Bonito Boats, Inc. v. Thunder Craft Boats, Inc.* 339, 372
- Boucicault v. Hart* 303, 320
- boundary conditions 237–40
- Bounty bar 11
- Boyle, J. 194
- Bracha, O. 242
- brand name pharmaceutical industry (Big Pharma) 575–6
- Brandeis, L.D. 179–80
- Braudel, F. 101
- Bray, C. 382–3
- Brazil 125, 156, 165, 537, 541
- breach of confidence 31, 38, 41–2, 112, 133, 279–80, 287–8, 513
- breach of contract 279–80, 287–8, 558–9
- breach of loyalty 38, 41–2
- Brenner, J.G. 8–9
- breast cancer 451–2

- breathalyzer machines 382, 423–5
Bridge Publications, Inc. v. Vien 524
 Bridy, A. 402
Bristol v. Equitable Life Ass. Soc'y 50, 51
 British Statute of Anne 320
Broadcast Music, Inc. v. Columbia Broad. Sys., Inc. 373
 Brussels Draft 551
 Bulgaria 583
 Bunner, A. 274, 275, 277
Burbank Grease Services, LLC v. Sokolowski 34–5
 Burk, D.L. 224, 244
 Bush, G.W. 396
 business advantage 227–9, 230–31
 business-to-business confidentiality contracts 88
 business relationships cases 38, 42–4, 114
Business Week 288–9

 Cadbury 8, 9
 Calabresi, G. 457–8
 California 85, 92, 95, 135
 State Bar 105–6
 Cambodia 583
 Canada 548, 561, 568
 candy industry 3–17
Carbo Ceramics, Inc. v. Keefe 414
 CARIFORUM Economic Partnership Agreement 588
 Carrier, M. 399
 Carter, S.L. 120
 Cassiers, V. 249
 Cava, A. 120–21
CBS, Inc. v. Davis 283–5, 286, 287, 295–6
CDN Inc. v. Capes 175–6
Cel-Tech Communications v. L.A. Cellular Tel. Co. 135
 cellophane 353–4, 373–4, 375
 censorship 285
 Center for Applications of Molecular Biology in International Agriculture (CAMBIA) 235, 263
 Centers for Disease Control (CDC) 450
Cenveo Corp. v. Slater 35
 ceremonies, sacred 223, 495, 511

 Chally, J.R. 90
Charlie and the Chocolate Factory (Dahl) 3–8, 12, 15
 chefs, French 238–9, 240
 chemicals *see* environmental law
 Chiappetta, V. 62–3
Chicago Board of Education v. Substance, Inc. 319, 320, 324
Chicago Lock Co. v. Fanberg 271–2, 276
 children 450–51
 Chile 582
 China 582–3
 chocolate 8–11
 chocolatl 9
 Christus, D.N. 416
Chrysler v. Brown 477
 Church of Scientology 523–4
Citizens Comm'n on Human Rights v. FDA 429
 Citron, D.K. 383, 398, 399–400
 civil conspiracy 40–41
 clarity, lack of 99
 Clayton Antitrust Act 356
 clean hands doctrine 60–61
 clearinghouses 247, 258–62, 265
ClearOne Comm., Inc. v. Chiang 96
 clinical chemistry analysers 204
 clinical trials data *see* test data
 exclusivity
 CMI Inc. Intoxylizer 5000 machine 424–5
 Coca-Cola 128, 130, 138, 222, 231, 232, 416
Coca-Cola Bottling Co. v. Coca-Cola Co. 416
Cohen v. Cowles Media Co. 287–8
 COICA Statement on Intellectual Property Rights and Biodiversity 503
 collaborative creativity 499
 collaborative licensing strategies 246–66
 collective action model for innovation incentives 216–18, 220
 collective learning 213
 collective ownership 503–6
 Collins, T. 446
 Colorado 87
 commercial morality 120–21

- commercial use 413–16
- commercial value
 - Article 39 of the TRIPS Agreement 520, 521, 550–51, 556
 - environmental law 458–62
 - indigenous innovation 520–26
 - trade secrets and antitrust law 369–71
- Commission on Intellectual Property, Innovation and Public Health (CIPIH) 577
- common law 18, 21–2
 - displacing with the UTSA 33–44
 - problem of multiple regimes of confidentiality 77–108
 - see also* torts
- commons 190–92, 193, 194, 222–45
 - creating and protecting through secrecy 233–43
 - defining 225–7
 - misappropriation and commons governance 227–9, 231–3
 - preserving in a hyper-protectionist legal environment 195–8
 - reconstructed or positive 256
 - secret methods and constructing a commons 240–43
 - secrets as commons resources 235–7
 - semicommons 191, 192–3, 194
 - trade secrecy as a feature of 227–33
- communication, risk 456–8
- communications protocols 378–9
- communities, innovation 213, 214, 219–20, 236–7, 508–9
- Compco Corp. v. Day-Brite Lighting, Inc.* 135, 554
- compensation 114, 578–81
 - monetary relief 24–5, 439
- compensatory liability regime 197–200, 579
- competition 262
 - anticompetitive effects of trade restraints 373
 - trade secrets and antitrust law 332–80
- competitive harm 489–90
- competitive intelligence gathering 113–14
- competitive morality 519
- compulsory licenses 586–8
- Computer Associations International v. Altai, Inc.* 308
- computer hacking 421
- computer language 177
- Compuware* case 309
- concealment strategy 73, 75
- concreteness of an idea 31–2
- conduct-based liability rules 185, 187, 189–90, 193
 - see also* liability rules
- confidence, breach of 31, 38, 41–2, 112, 133, 279–80, 287–8, 513
- confidential relationships 367
 - business relationships cases 38, 42–4, 114
 - ‘implied’ 307–8
- confidential treatment of data 467, 469, 473–80, 486
- confidentiality contracts 43–4, 80, 88–91, 99, 107, 127, 162, 252
- confidentiality torts 91–8, 99, 100, 108
- consistency, lack of 99
- consultants 170
- Content Scramble System (CSS) 274–5, 294
- consumer products 448–9
- continuous use requirement 25–7, 30
- contractarianism 66
- contracts 264, 334
 - antitrust law and trade secrets 339–44
 - breach of contract 279–80, 287–8, 558–9
 - confidentiality contracts 43–4, 80, 88–91, 99, 107, 127, 162, 252
 - contract law and trade secret theory 118
 - contracting around trade secret law 137
 - implied-in-fact 30–31
 - implied-in-law 31, 32
 - public funded/sponsored research and 418, 425–8
- contributory negligence 69–70, 136
- Convention on Biological Diversity 497
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions 508
- Convention for the Safeguarding of Intangible Cultural Heritage 508

- Conyers, J. 397
 copyleft 262–3
 copyright 18, 47, 68, 111, 122, 137, 236, 280–81
 access and trade secrecy in expression 310–30
 candy industry and 12–13
 deposit requirement 301, 312–20, 329
 disclosure 124
 effect of a trade secret on 176–8
 effect on a trade secret 175–6
 impetus for secret copyrights 310–12
 and incentives 152–3, 158–9, 166–7, 174–8, 202, 211–12
 pre-emption 37–8, 301–2, 303–9
 regime choice 336–8
 trade secrets and the ‘philosophy’ of 299–331
 Copyright Act 37, 44, 181
 1909 version 302, 313–15
 1976 version 300, 301–3, 315–18
 Copyright Office 301, 310, 311–12, 313–19, 329
 core business method 408
 core developers 215
 Cortés, H. 9
 cosmetics 448–9
 cost sharing compensation model 580
 Cotter, T.F. 159
 courts
 absence of a centralized system 102
 state courts *see* state courts
 Cover, R.M. 403
Crane Helicopter Servs. v. U.S. 412–13
 Creative Commons 260
 credible commitment 262
 credit checking systems, online 208
 criminal penalties 114
 Critical Infrastructure Information Act (CIIA) 436–7
Critical Mass Energy Project v. Nuclear Regulatory Comm’n 463
 cross-licensing 246, 255, 265
 cultural participation, right of 507–9
 current employees 41–2
 custodianship 502–10
 customer lists 157
CVD v. Raytheon 338, 363–4
 Daes, E.I. 503–4
 Dahl, R. 8
 Charlie and the Chocolate Factory 3–8, 12, 15
Dallas Cowboy Cheerleaders, Inc. v. Scoreboard Posters, Inc. 279
 damages *see* compensation
 data exclusivity *see* test data exclusivity
 data sharing 491
 database protection laws 195
 database trusts 534
 databases 530–32, 533–4, 535
 DataMaster breathalyzer machine 423–4
de novo review 296
 DeCSS 274, 275, 276, 278, 294
 deculturization 506, 524–6
Defcon, Inc. v. Webb 28
 deference 366–9
 definition of a trade secret 25–8, 57, 77, 78, 227–9, 333–6, 407, 409–13
 and commons resources 229–30
 narrowing and transparency 438
 TRIPS Agreement 546–9
 UTSA 25–8, 57, 227–8, 250, 334, 414–15, 521
Del Madera Props. v. Rhodes & Gardner, Inc. 308
 departing employees 79, 80, 114, 118
 deposit requirement 301, 312–20, 329
 DES 451
 Desert Bar 10
 design protection laws 194, 195
 developing countries 148, 200, 546, 547, 571–2, 574, 584–5
Diamond Power Int’l, Inc. v. Davidson 96
 diasporic ownership 506–9
Dicks v. Jensen 61
 Diebold Election Systems 419–23
Digidyne Corp. v. Data General Corp. 357–8
 Digital Millennium Copyright Act (DMCA) 177
 digitized books 401
 Dinca, R. 574, 579–80
 disclosure 110, 251
 clinical trials data 479–80, 482–5
 accelerating the time of data disclosure 486–91

- copyright vs trade secrecy 330–31
- environmental law 464
- First Amendment and public disclosure 271
- forced 155
- intellectual property theory and incentives to disclose 123–8
- trade secret law encouraging 148
- disclosure bargain *see* bargain
- dishonest practices 551, 552, 577
- distinctiveness of trade secrets 366–9
- Diversity Arrays Technology (DArT) 263
- Doha Declaration 582, 587
- dominant design 214
- Dove candy bar 10
- Dr. Miles Medical Co. v. John D. Park and Sons Co.* 347–50
- Draft Database Treaty 533
- Dreyfuss, R. 255
- Drug Price Competition and Patent Term Restoration Act (1984) (Hatch-Waxman Act) 467–8, 469, 480–86, 488
- drugs *see* pharmaceutical industry; test data exclusivity
- due process issues 295–7
- Duffy, J.F. 144
- Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* 438
- Dunkel Draft 552, 569
- DuPont 453
 - cellophane case 353–4, 373–4, 375
 - Christopher* case 58, 113–14, 116–17, 124–5, 160, 230
 - Masland* case 115–16, 132, 133, 280
- duration of protection 571
 - analytical framework for antitrust and trade secrets 367, 374
 - infinite possible duration 416–17
 - injunctive relief, UTSA and the TRIPS Agreement 561–2
 - IP theory of trade secrets 138
 - limiting and transparency 438
 - regulatory exclusivity 481–2
 - trade secrets vs patents 168–9, 337
- DVD Copy Control Association v. Bunner* 167, 270, 274–9, 283–5, 294, 296
- DVDs 177
- dynamic innovation 144
- E. Bement & Sons v. Nat'l Harrow Co.* 348
- E.I. duPont de Nemours and Co. v. Christopher* 58, 113–14, 116–17, 124–5, 160, 230
- E.I. duPont de Nemours Powder Co. v. Masland* 52, 115–16, 132, 133, 280
- eBay 401, 403
- EC Guidelines 544–5
- Economic Espionage Act (1996) (EEA) 106–7, 334, 368, 415, 473, 478, 521
- economic impact of data exclusivity 584–5
- economic theories 64–5
- economic value *see* commercial value
- Edwards, A. 382–3
- efficiency 373–5
- Elcor Chem-Co. v. Agri-Sul, Inc.* 89
- Eldred v. Ashcroft* 283, 307, 321
- Electro-Craft Corp. v. Controlled Motion, Inc.* 60–61
- eligibility of subject matter 112
- Ellsberg, D. 290–91
- embedded Linux 206, 215–16
- employee confidentiality contracts 88, 89, 91
- employee training 86–7
- employer-owned information 161–2
- employers 91
- endocrine disruptors 451
- enforcement costs 63, 67–71
 - error costs 70–71
 - process costs 67–70
- Enter. Leasing Co. v. Ehmke* 48
- environmental law 442–66
 - alternatives 464–6
 - knowledge problem in 446–55
 - expanding information deficits 449–50
 - pollution and information 446–9
 - small doses with large effects 450–52
 - weakened risk management 452–5
 - legal regime 455–64
 - access and communication 456–8
 - commercial secrecy 458–62
 - FOIA 443–4, 462–4

- Environmental Protection Agency (EPA) 281–2, 443, 444, 453–4
Erie R.R. v. Tompkins 554
 error costs 70–71
 espionage 9, 11, 80
 established, slow-growth businesses 87
 ethics *see* morality/ethics
 Europe 248–9
 European Community (EC) 568, 569
 EC Guidelines 544–5
 FTAs 588
 interpretation of TRIPS Agreement
 Article 39(3) 571
 negotiation of TRIPS Agreement
 Article 39 542, 544–5, 548, 549–51
 European Free Trade Association (EFTA) 580–81
 European *Microsoft* case 360–62, 377
 European Patent Convention (EPC) 144–5, 146, 147
 European Union (EU)
 Cosmetics Directive 449
 Database Directive 533
 REACH program 445–6
 evidentiary benefits 59–60, 63
 exclusivity 122, 155
 environmental law 464–5
 innovative know-how and exclusive rights 191, 192, 194, 195–8, 199
 test data *see* test data exclusivity
 exhaustion doctrine 371
 exposure levels 450–52
 expression, trade secrecy in 310–28
 extraordinary circumstances 483–5, 486
- facts 175
 fair use 324–5
 false allegations 515, 516
 Fauchart, E. 238–9
 federal courts 102
 Federal Food, Drug and Cosmetic Act (1938) (FDCA) 473, 478
 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 448, 464–5, 579, 581
 Federal Rules of Civil Procedure (FRCP) 395
- federal statutory right, absence of a 368
 Federal Trade Commission (FTC) 360, 383, 392–3
 federalization of trade secret law 106–8
 Fellmeth, A. 578–9
 Fenster, M. 434
 fetuses 450–51
Finkel v. U.S. Dept of Labor 432
 First Amendment 138, 391–2
 defenses 269–98
 direct misappropriators and 287–8
 likelihood of increasing tensions with trade secrecy law 274–7
 no categorical immunity for trade secret claims 277–85
 other due process issues 295–7
 rare use of 271–4
 reconsidering trade secret claims and the prior restraints doctrine 286–95
 third party recipients of newsworthy secrets 288–95
 fixation, copyright and 312–13, 324–7
 flawed data 107
 flexibility 510–13, 515–16, 518, 535–6, 567
 float glass technology 354–6, 365
FMC Corp. v. Varco Int'l, Inc. 131–2
 Food and Agriculture Organization (FAO) 528
 Panel of Eminent Experts on Ethics in Food and Agriculture 577–8, 586
 Food and Drug Administration (FDA)
 clinical trial data and new drug applications 467–91
 impact of the Hatch-Waxman Act 480–86
 origins of current administrative practice 473–80
 Transparency Task Force 480, 483–4
 Foray, D. 212–13
 forced disclosure 155
Ford Motor Co. v. Lane 289–90
 formulae/recipes, secret 9, 10, 11, 13, 178–9, 238–9, 343–50, 416
Foster v. Mountford 511–13, 523
Foundry Servs., Inc. v. Beneflux Corp. 352–3, 374

- Fowle v. Park* 343–4, 350, 373, 374
 Franke, N. 205
Franke v. Wiltschek 55–6, 92–3, 132
 fraud 39
 free riding 117, 195–6, 218–19
 pharmaceutical industry 469, 472, 482, 485
 free speech defenses *see* First Amendment
 free trade agreements (FTAs) 570, 580–81, 582–3, 587–8, 589–90
 Freedom of Information Act (FOIA) 406, 474–5, 477–8, 566
 environmental law 443–4, 462–4
 trade secrecy exception to 428–32
 French chefs 238–9, 240
 Frischmann, B.M. 226, 227, 241, 434
 frivolous suits 70–71
 FUDECI 532, 533
 ‘full reports’ of drug investigations 475–6, 479, 480–81, 482–3, 485, 488

 Galanter, M. 104
 game theory 74
 gamespace 403
Garth v. Staktek Corp. 286–7
 General Dynamics Corporation 430
 General Public Licence (GPL) 205, 213, 263
 general rule, and RSP requirement 70, 71–2, 73
 generational innovation 499
 see also indigenous innovation
 Georgia 583
 Germany 521
 Ghidini, G. 145
 Gilson, R.J. 164
 GNU General Public License (GPL) 205, 213, 263
 goals of trade secret law 101–2
 gobstoppers 8
Gonzales v. Google, Inc. 395
 Google 498
 search engine rankings and secrecy 383–4, 385, 386, 391, 394–5, 396–7, 400–401, 401–2, 402–5
 search engine results as a commons 240–43
 governance, commons 227–9, 231–3
 government
 and the private sector *see* private sector–government relationship
 public funded/sponsored research 190–92, 418, 425–8, 491
 regulation *see* regulation
 test data exclusivity *see* test data exclusivity
 use or disclosure and the First Amendment 281–2
 see also public infrastructure
 Graves, C.T. 35, 63
 Grimmelmann, J. 387, 399
 Guatemala 572
 guilds 125

 hacking, computer 421
 Halavais, A. 385
Hamilton Mfg. Co. v. Tubbs Mfg. Co. 52
 Harhoff, D. 206
Harper & Row Publishers, Inc. v. Nation Enters. 305–6, 307, 324
 ‘Harry Potter’ books 179
Hartman v. John D. Park & Sons Co. 345
 Hatch-Waxman Act 467–8, 469, 480–86, 488
Hauck Mfg. Co. v. Astec Industries, Inc. 89–90, 96
 health care 384, 402
 Heath candy bar 11
 Helsinki Declaration 585
 Henderson, W. 104
 Henkel, J. 205–6, 215–16
 Hershey 9–12, 15
 Hertel, G. 214, 219
 ‘heterox’ reading of Article 39(3) 573–4
 Hill, J.W. 66
 Hirsch, S. 395
 historical accident 101
 Hoboken, City of 417
 Homeland Security Act (2002) 436–7
 honest commercial practices 513, 514, 515–16
 acts contrary to 551, 552, 577
 honor 239
 Hopi Indians 495, 506, 511, 525
House v. Commonwealth 424–5
 House Judiciary Committee 319

- Howell, H.A. 302
Hudson Hotels Corp. v. Choice Hotels Int'l 30
 human dignity 507–9
 human gene therapy 479–80
 human rights 507–9
 hybrid agreements 255, 265
 hybrid legal regimes 191, 194, 195–8, 199
 Hyde, A. 163
 hydraulic fracturing (fracking) 447
 hyper-protectionist legal environment 195–8
- Iams Company 426–7
 IBM 204
 ideas
 copyright and 175, 176
 submission 29–33, 133
 identical/similar information 166, 207–9
 illegally intercepted telephone calls 292–4
 Illinois 95
Illinois Toolworks v. Independent Ink 335, 357
Image Technical Servs., Inc. v. Eastman Kodak 375–6
 ‘implied’ confidential relationships 307–8
 implied duty 113
 implied-in-fact contract claims 30–31
 implied-in-law contract 31, 32
 improper means 23–4, 26, 53, 116, 166, 231–2, 271, 279–80, 557–8
In the Matter of Intel Corp. 360
In re Bass 412
In Re Schrader 169
 inadventure, legislative 303, 312–28, 330
 incentives 64–5, 119, 152–82, 366–7
 among different intellectual property frameworks 165–81
 copyright and 152–3, 158–9, 166–7, 174–8, 202, 211–12
 created by trade secret law 159–63
 to disclose 123–8
 inherent secrecy incentives 155–63
 intellectual property theory of trade secrets 122–3
 patenting and 122–3, 147–8, 152–3, 158–9, 166–7, 167–74, 181
 positive incentives for open revealing 212–16
 private-collective model for 202, 216–21
 trade secret law vs no protection 154–65
 trade secret law vs right to privacy 179–81
 trademarks and 166–7, 178–9
 independent development 73, 142, 166, 560–61
 India 541, 546–7, 564, 588
 test data protection 572–3
 indigenous innovation 223, 495–536
 commercial value 520–26
 evolving concept of international trade secret protection 501–2
 ignored concept 498–501
 ownership issue 502–10
 practical problems in trade secret protection 526–9
 protection as unfair competition or property right 513–20
 secrecy as a flexible standard 510–13
 trade secrets and patents 530–34
 inert pesticide ingredients 448
 inevitable disclosure injunctions 85, 106
 information *see* knowledge/
 information
 information clearinghouse 259
 information technology 204–5, 300–301, 418
 see also Internet; software; websites
 infrastructure
 open 251–4
 public *see* public infrastructure
Ingersoll-Rand Co. v. Ciavatta 100
 injunctions 24, 114–15
 denying to improve transparency 439
 indigenous innovation 511, 512
 inevitable disclosure injunctions 85, 106
 with limiting terms 296
 in ordinary trade secret cases 286–7
 preliminary 283–5, 286–7, 296
 tailored to respect First Amendment values 297

- UTSA, TRIPS Agreement and the duration of injunctive relief 561–2
- innovation 100, 336, 498
 - dynamic 144
 - effects of secrecy on 472–3
 - EPC 144–5
 - generation of innovative know-how 185–200
 - incentives *see* incentives
 - indigenous *see* indigenous innovation
 - open *see* open innovation
 - protection of investment in 187–90
 - and the requirement of reasonable secrecy precautions 46–76
 - small-scale 194, 195–8, 198–200
- innovation communities 213, 214, 219–20, 236–7, 508–9
- innovativeness 336, 373–4
- institutions 226–7, 233
 - trusted 383–4, 392–8, 466
- Intel 360
- intellectual property (IP) 202, 244, 262, 334
 - environmental law and 459–60
 - international agreements 539–40
 - see also* TRIPS Agreement
 - regime choice 336–9
 - regimes and incentives to innovate 152–4, 165–81
 - similarities and dissimilarities of trade secrets to 166–7
 - trade secrets as 109–39, 185–7
 - constructing an IP theory of trade secrets 121–31
 - implications for trade secret law 131–8
 - in Italy 140–51
 - see also* copyright; patents; property rights; trademarks
- intellectual property bar 103–4
- intellectual property counseling 83
- Intellectual Property Licensing Guidelines 332, 338–9, 351, 356–7
- interests served by confidentiality regimes 82–3, 87, 91, 98, 98–9
- interface information 376–9
- interference with business relations 38, 42–4, 114
- Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) 496–7, 507
- intermediary products 250
- internal balances 371–2
- International Covenant on Civil and Political Rights (ICCPR) 507–8
- International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) 572, 575–6
- International Technologies Consultants, Inc. v. Pilkington PLC* 365
- international trade secret protection 500–501
 - evolving concept 501–2
 - TRIPS Agreement *see* TRIPS Agreement
 - unfair competition or property right 513–20
- International Treaty on Plant Genetic Resources for Food and Agriculture 200
- Internet 225, 499
 - indigenous innovation and websites 530–32
 - postings and the First Amendment defense 274–9
 - search engines *see* search engine rankings/results
- intoxication-detection instruments 382, 423–5
- Investigational New Drug applications (INDs) 474, 479
- investment
 - over-investment in secrecy 124–6, 129
 - protection of investment in innovation 187–90
- iron industry 203, 209
- Iroquois 525
- Italian Code of Industrial Property 140–51, 198, 248
 - critical assessment 143–9
 - economic drivers of the new regime 149–50
 - new regime 142–3

- J.T. Healey & Son, Inc. v. James A. Murphy & Son, Inc.* 55, 60
 Jager, M. 115
 Janke, T. 505–6
 Japan 165, 521, 545
John D. Park & Sons Co. v. Hartman 345–7, 349–50
 Johnson-Laird, A. 310
Joint Stock Soc’y v. UDV N. Am., Inc. 414
 Jordan 582, 584–5
 journalists 288–95
Junker v. Plummer 56
- Kachina masks 525
Kamin v. Kuhnau 131
 Kaplan, B. 323
 Kelty, C.M. 397
 Kentucky 36
 Kentucky Fried Chicken Original Recipe 178
 Keraplast Technologies 297
Kewanee Oil Co. v. Bicorn Corp. 16, 122–3, 130, 230, 272–3, 305, 328, 335, 366, 563
 Kirk, M. 558, 566
 Kitch, E.W. 63, 143
 Klandermands, B. 219
 know-how 335
 natural semicommons of innovative know-how 185–200
 tacit 169–70
 knowledge/information
 knowledge/information commons *see* commons
 knowledge problem in environmental law 446–55
 sharing 155, 163–5
 substitute information 166, 207–9
 traditional *see* indigenous innovation
- Kodak 358–9, 378
 Koppel, N. 382–3
 Korea, South 580–81
 Kreiss, R.A. 177, 323
KSR Int’l Co. v. Teleflex, Inc. 196, 369
- La Cellophane 353–4, 375
 labor mobility 101, 163–4
 Ladas, S.P. 188
 Lakhani, K. 208–9
 land 281
 Landes, W.M. 153
 Lanham Act 18, 44
 law firms 174
 law of ideas 29–30
 law scholars 103, 104–5
 Law School Aptitude Tests (LSATs) 300
 lead time, natural 142, 189, 252
 learning
 collective 213
 through practice 174
 Lebanon 580
Leegin v. PSKS 351–2
 legislation 106
 legislative inadvertence 303, 312–28, 330
 Lemley, M.A. 143, 148, 195, 227, 248
 Leon County, Florida 421
 Lerner, J. 213, 408
 Lester, G. 86
 Levin, R.C. 211
 Levine, D. 383, 393–4, 399
 Levy, S. 388
 liability rules 197
 absolute 185–6
 compensatory liability regime 197–200, 579
 conduct-based 185, 187, 189–90, 193
 liability torts, strict 559–60
 Library of Congress 124, 313–19, 401
 library IT search software 204–5
 licensing
 collaborative 240–66
 compulsory 586–8
 encouraged by trade secret law 64–5
 mass market licenses 274
 Lim, K. 204
 limited commons 237–8
 limited ‘head start’ injunction 114–15
 liquorice bootlaces 8
 lithographic equipment 204
 Lithuania 583
 litigation 100
 costs of trade secret and patent litigation 123
 multiple regimes and 78
 precautions as substitute 67–8
 vs self-help 47–8
Lloyd Corp. Ltd v. Tanner 279

- lobbying 106
- Lockean labor/desert 65–6
- Loshin, J. 239
- low level exposures 450–52
- Lyndon, M.L. 253, 383

- M&M's 11–12
- Machlup, F. 148
- Madison, M.J. 226, 243
- magicians 239–40
- Maine lobster fishery 226
- Mallinckrodt Inc. v. Medipart, Inc.* 371
- Mansfield, E. 209, 337
- manufacturing, multi-stage 161
- markets 225
 - non-competition covenants and 84
- Mars, Forrest, Sr 11, 12
- Mars Company 9–12, 15
- Marwell, G. 217
- mass market licenses 274
- Material Transfer Agreements (MTAs) 526–8, 535
- mathematical methods 169
- Matsuo, K. 521
- Matthews, B. 323
- McClary v. Hubbard* 51–2, 56
- McDonald's 178
- McDonnell Douglas Corporation v. Widnall* 430–31
- medical biotechnology sector 258, 261
- Medicare 384
- Mehigan, S. 522
- Meitinger, I. 578
- membership, commons 227–9, 230–31
- Merges, R.P. 150, 256
- meta-analysis 487–8
- methods/processes, secret 240–43, 250, 340–43
- Mexico 9, 125, 156, 165, 549
- Microsoft 231, 234, 242, 278, 360–62
 - European *Microsoft* case 360–62, 377
- Microtech International, Inc. v. Fair* 395
- military procurement 430–31
- Millar v. Taylor* 321
- Milpurruru & Ors v. Indofurn Pty Ltd & Ors* 505–6
- mines 203–4
- misappropriation 31, 32–3, 112, 113, 133, 140–41
 - codified misappropriation laws 195
 - and commons governance 227–9, 231–3
 - direct misappropriators and First Amendment defenses 287–8
 - UTSA and common law 38–42
 - UTSA and the TRIPS Agreement 557–9
- Mishina, K. 204
- misleading information 515, 516
- Mississippi State University (MSU) v. People for the Ethical Treatment of Animals (PETA)* 426–8
- mixed agreements 255, 265
- Moby-S system 254
- Moncrief, N. 391
- monetary damages/relief 24–5, 439
- monopolies 249, 335–6, 358–65
 - bad faith litigation 363–5
 - conduct of monopoly firms 375–9
 - refusal to supply 358–63, 375–6
- monopoly rents, no extraordinary 157–9
- Monsanto 281–2, 365, 461
- morality/ethics 65–6, 585–6
 - commercial 120–21
 - competitive 519
- morning star pole 504
- Morocco 587
- Morrison, P.D. 204–5
- Morse, Representative 344
- Mortgage Specialists, Inc. v. Davey* 36
- Moser, P. 168
- Mountford, C.P. 511–13
- Moynihan, D.P. 440
- multifactor test 53–4
- multiple regimes of confidentiality 77–108
 - confidentiality contracts 43–4, 80, 88–91, 99, 107, 127, 162, 252
 - non-competition covenants 83–7, 99, 107, 562–3
 - official trade secret law 81–3, 99
 - potential solutions 104–8
 - the problem 79–81
 - results of the confusion in trade secret law 98–101
 - sources of the problem 101–4
 - unofficial trade secret law

- (confidentiality torts) 91–8, 99, 100, 108
- multi-stage manufacturing 161
- National Advertising Division (NAD) of the Council of Better Business Bureaus 384
- National Commission on New Technology Uses of Copyrighted Works (CONTU) 328
- National Conference of Bar Examiners v. Multistate Legal Studies, Inc.* 312, 313, 316, 319–20, 331
- National Conference of Commissions on Uniform State Laws 20–21, 248, 554
- National Institutes of Health (NIH) 491
 - Recombinant DNA Advisory Committee (RAC) 479
- National Parks Conservation Association v. Morton* 463
- national security 397
- natural law 50
- natural lead time 142, 189, 252
- natural open-source technology pool 190–93
- natural resource commons 225–6
- Nebraska v. Kuhl* 423–4
- negative information 250, 487
- negligence, contributory 69–70, 136
- Nepal 583
- Nestlé, H. 11
- networks
 - among like-minded attorneys 105–6
 - network effects 213–14
- New Drug Applications (NDAs) 467–91
- New Hampshire 36
- new technology start-ups 100
- New York Broadcast Employees Freedom to Work Act 106
- New York Times Co. v. United States* (Pentagon Papers case) 284, 290–92
- Newman, N. 165
- newsworthy secrets, third party recipients of 288–95
- non-competition covenants 83–7, 99, 107, 562–3
- non-disclosure agreements
 - (confidentiality contracts) 43–4, 80, 88–91, 99, 107, 127, 162, 252
- non-governmental organizations (NGOs) 384, 401, 527
- non-obviousness 166, 191, 194, 196, 198–9
- non-profit sector 403
- normative case for the RSP requirement 48, 64–75
- norms, social 238–40, 244–5
- North American Free Trade Agreement (NAFTA) 501
- North Carolina State Board of Elections (BOE) 419–21, 422, 423
- notice 49–50, 59–60, 62–3
- novelty 31–2, 166, 498–9
- Nuvolari, A. 203–4, 213
- Obama, B. 396, 406
- obvious innovations 171–3
 - non-obviousness 166, 191, 194, 196, 198–9
- Office of Management and Budget 406
- O'Grady v. Superior Court* 282
- Oliver, P.E. 217
- Oman 583
- online advertising 392–3
- online credit checking systems 208
- open access 253
- open biotechnology 235–7, 246–66
 - trade secrecy and 254–63
- open code e-voting systems 400
- Open Government Directive 472
- open infrastructures 251–4
- open innovation 201–21
 - evidence of open revealing 203–6
 - paradigm 265–6
 - positive incentives for open revealing 212–16
 - practical case for open revealing 206–16
 - private-collective model for innovation incentives 202, 216–21
- open patent 253
- open science 201
- open source regimes 253, 262–3
 - biotechnology 235–7, 247, 263, 265

- software 205, 206, 213, 214–16, 217–18, 219, 225
- open-source technology pool 190–93, 194
- open standard 214
- openness
 - secrecy and 222–4
 - see also* commons
- optimal level of precaution 68–70
- Oregon Steam Navigation Co. v. Winsor* 340
- O'Reilly, J.T. 484–5
- originality 166
- Ostrom, E. 225–6, 257
- over-investment in secrecy 124–6, 129
- ownership issues 502–10

- Paepke, O. 187
- Panama 587
- Paris Convention 503
 - Article 10*bis* 141, 186, 514–16, 519, 521, 538, 548–9
- Parker, A. 349
- Pasquale, F. 242, 382, 394, 397, 398
- Patent Act 44
- patent citations 164–5
- patent pools 225, 232, 247, 256, 257–8, 265
- Patent, Trademark and Copyright (PTC) Section of the American Bar Association 554
- patents 18, 47, 111, 190, 223, 236, 280–81, 460
 - candy industry and 12
 - channeling protection between trade secrets and 128–31
 - compatibility of trade secrecy and patent law 272–3
 - conflict with trade secret law and the TRIPS Agreement 564–5
 - disclosure 123–4, 471
 - and incentives 122–3, 147–8, 152–3, 158–9, 166–7, 167–74, 181
 - indigenous innovation and 530–34
 - low profits from patenting 209–12
 - new Italian regime and the patent system 143–50
 - non-obviousness 196
 - open patent 253
 - and openness 223, 236
 - regime choice 337–9
 - strength compared with trade secrecy 16–17
 - and transparency 410–11, 433, 435–6
- Patterson, L.R.* 321, 323
- Peabody v. Norfolk* 18, 342
- Peerless Roll Leaf Co., Inc. v. Lange* 52
- Pennsylvania 35
- Penrose, E. 148
- Pentagon Papers case 284, 290–92
- Peritz, R.J.R. 146–7
- Perlman, H. 21
- personal computers (PCs) 300–301
- personhood theory 66
- Peru 537, 563, 585, 587
- 'Peruna' 345–7
- Peruvian Law of Protection of the Collective Knowledge of Indigenous Peoples 532–3
- pesticides 448, 464–5
- Peter Paul Candies 11
- Peterson, J.R. 554
- pharmaceutical industry 172, 261
 - test data exclusivity *see* test data exclusivity
- Phillip Morris, Inc. v. Reilly* 433–4, 461
- Pilkington 354–6, 365, 374
- Pitjantjatjara People 511–13
- plant genetic resources 200
- plant knowledge 526
- plant variety protection laws 194, 195
- policy
 - effects and incentives 159
 - objectives of confidentiality regimes 82, 85–7, 90–91, 97–8
- political google-bombing 396–7
- Pollan, M. 125–6
- pollution
 - and information 446–9
 - see also* environmental law
- Pooley, J.H.A. 134
- positive commons 256
- Posner, R.A. 153
- practice, learning through 174
- precautions 24
 - as necessary to trade secret rights in all cases 50–52
 - as notice and as safeguard against publication 49–50

- reasonable secrecy precautions *see* reasonable secrecy precautions (RSP) requirement
- predictability in counseling 83
- pre-emption 93–6
 - copyright 37–8, 301–2, 303–9
 - provision of the UTSA 34–44, 93–6
 - trade secrets as IP rights and 133–5 and the TRIPS Agreement 563–5
- preliminary injunctions 283–5, 286–7, 296
- presumptions 366–9, 373, 380
- price-restrictive agreements 344–50, 350–52, 372–5
- pricing, lack of monopoly rents and 157–9
- prior restraints doctrine 283–95
- privacy rights 66
 - and incentives 179–81
- private-collective model of innovation
 - incentives 202, 216–21
- private concern 293–4, 438
- private investment model of innovation
 - incentives 206, 216, 220
- private sector–government relationship 407–9, 417–41
 - private provision of public infrastructure 417–18, 419–25, 434–6
 - public funded/sponsored research and contracts 418, 425–8, 491
- process costs 67–70
- processes/methods, secret 240–43, 250, 340–43
- Procter & Gamble Co. v. Bankers Trust Co.* 288–9, 290
- product differentiation 158–9
- profits 336
 - low profits from patenting 209–12
- programmed obsolescence 147–8
- Project Orinoco website 530, 531
- ‘Promoting Innovation’ report 332, 375
- property rights 278, 279, 333–4
 - environmental law and trade secrecy 460–61
 - indigenous innovation and 503–4, 513–20
 - IP, property and ‘absolute dominion’ 137–8
 - precautions and common law 50–52 and trade secret theory 118–20
 - trade secrets are not property akin to patents, copyrights or land 279–81
 - trade secrets and the First Amendment defense 281–3 *see also* intellectual property
 - property theory
 - decline of 52–3
 - dominance (1860 to 1920) 49–52
 - prostratin 526–7
 - protection
 - hyper-protectionist legal environment 195–8
 - term *see* duration of protection
 - trade secret law vs no protection 154–65
 - public benefit 320–28
 - Public Citizen Health Research Group v. FDA* 477–8, 479
 - public concern 293–4, 437–8
 - public contracting 430–31
 - public failure 400–401
 - public goods 202, 216–17
 - invention as a public good 155
 - Public Health Service Act 476–7
 - public infrastructure 411, 417–41
 - eliminating trade secrecy protection for 433–7
 - private provision of 417–18, 419–25, 434–6
 - public interest 281–2, 293–4
 - public libraries 225
 - public option 384, 398–402, 404–5
 - public transparency *see* transparency
 - publication
 - copyright and 312–13, 324–6
 - precautions as safeguard against 49–50
 - Punte del Este Declaration 540
 - pure pooling equilibrium 74
 - Putnam, G. 314
 - qualified transparency 383, 466
 - quality, review of 368–9
 - quasi-contract 31, 32
 - Raymond, E.S. 213
 - Raytheon 363–4

- reasonable secrecy precautions (RSP)
 - requirement 14–15, 46–76, 112–13, 142–3, 167, 230, 251
- Article 39 of the TRIPS Agreement 556–7
- critical review of modern theories 58–64
- enforcement costs 63, 67–71
- history 49–58
- intellectual property theory of trade secret law 135–7
- normative case 48, 64–6
- reconsideration of the normative case 67–75
- signaling 72–5
- reasonableness test 344–50
- recipes/formulae, secret 9, 10, 11, 13, 178–9, 238–9, 343–50, 416
- recombinant DNA 250
- reconstructed commons 256
- Reeves v. Alyeska Pipeline Serv. Co.* 30–31
- refusal to supply 358–63, 375–6
- Régibeau, P. 518
- regime choice 336–9
- registration 74–5, 167, 465
 - and copyright 174, 176
 - environmental law 465–6
 - indigenous innovation 532–3
- Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH) program 445–6
- regulation 160–61
 - agency expertise and search engine rankings 383–4, 392–8, 404
 - vs public option 384, 398–402, 404–5
- regulatory exclusivity *see* test data exclusivity
- Reichman, J.H. 185
- Reid, B.C. 168
- relative secrecy 555
- religious materials 522–4
- Religious Technology Center v. Lerma* 273
- Religious Technology Center v. Netcom On-Line Communication Services, Inc.* 524, 525–6
- Religious Technology Center v. Scott* 523–4
- Religious Technology Center v. Wollersheim* 523
- Remiche, B. 249
- reputation 213
- resale price restraints 344–50, 351
- research 445
 - environmental law 465
 - public funded/sponsored 190–92, 418, 425–8, 491
 - signaling and 72–3
 - social value of clinical trials data disclosure 490–91
- research communities 213, 214, 219–20, 236–7
 - see also* commons
- Restatements 81–3, 112, 116, 137, 456, 474–5
 - First of Torts 19–20, 23, 25–6, 53–4, 57, 227–8, 407, 410, 411–12, 456, 553
 - Second of Agency 26
 - Second of Torts 20, 21
 - Third of Unfair Competition 40, 45, 57, 62, 280, 334, 413, 415, 458–9
 - and the UTSA 21–33
- restraints of trade 350–58
 - price 344–50, 350–52, 372–5
 - territorial 352–6, 372–5
 - tying 356–8
- restrictive business practices 83–7, 99, 107, 562–3
- reverse engineering 73, 141, 142, 166, 230, 231, 271–2, 339
 - Article 39 of TRIPS and UTSA 560–61
 - generation of innovative know-how 186–7, 189, 192–3
- Review Panel on New Drug Regulation 477
- Richter v. Westab, Inc.* 30
- Risch, M. 63, 125
- risk communication 456–8
- risk management 452–5
- rituals, sacred 223, 495, 511
- Roberts, J.H. 204–5
- Roboserve, Ltd. v. Tom's Foods, Inc.* 29
- Robotic Parking 417

- Rockett, K. 518
- Rockwell Graphics Systems, Inc. v. DEV Industries, Inc.* 59, 60
- Rohm & Haas Co. v. Adco Chemical Co.* 132, 136
- routine engineers 192–3, 194
- routine innovation 191, 194
- Rowntree 9
- royalty collection clearinghouse 260–61
- RTE Corp. v. Coatings, Inc.* 60
- Rubin, P.H. 86
- Ruckelshaus v. Monsanto Co.* 118–19, 279, 281–2, 461
- rule of doubt 301
- rule of reason analysis 369–70, 374–5, 379
- rules
 - general rules and RSP requirement 70, 71–2, 73
 - liability rules *see* liability rules
- Russia 583
- sacred ceremonies 223, 495, 511
- Salinger* case 329–30
- Samoan traditional healers 526–7
- Samuelson, P. 141, 185, 252, 310
- Sancho, I. 421
- Saudi Arabia 583
- Savage, D. 391
- scholarly attention 103, 104–5
- Schulman, E.M. 86
- Schwarzman, M.R. 442
- science 217
 - commons 190–92, 193, 194
- Scientology, Church of 523–4
- scope of trade secret law 112–15
- Scotchmer, S. 141, 185, 252
- search engine optimizers (SEOs) 382, 387–8, 389–91
- search engine rankings/results 381–405
 - as a commons 240–43
 - public option 384, 398–402, 404–5
 - regulation agency expertise 383–4, 392–8, 404
 - secrecy and accountability 384–92
- search software, library 204–5
- Sears, Roebuck & Co. v. Stiffel Co.* 135, 554
- Second Enclosure Movement 194
- secondary liability rule 273
- secrecy requirement 112, 167, 554–6
 - centrality of 131–3
 - channeling protection between patents and trade secrets 128–31
- secret copyrights 302–3
 - impetus for 310–12
 - see also* copyright
- secret formulas/recipes 9, 10, 11, 13, 178–9, 238–9, 343–50, 416
- secret methods/processes 240–43, 250, 340–43
- secure tests 300, 310–12
 - deposit requirement 312–20
- selective incentives 217
- self-determination 506, 509
- Self Directed Placement Corp. v. Control Data Corp.* 28
- self-help 249, 251
 - discouragement of costly and wasteful investment in 64–5
 - inherent secrecy incentives 155–63
 - vs litigation 47–8
 - see also* reasonable secrecy
 - precautions (RSP) requirement
- self-revealing know-how 194, 195–8
- semicommons 191, 192–3, 194
- Semiconductor Chip Protection Act (1984) 199
- semiconductor manufacture 204
- Shah, S. 205, 211
- shared information, value of 155, 163–5
- Shedd, P. 86
- Sherman Act (1890) 339, 344–50, 351
- Sherwood, R.M. 125, 156, 165
- ‘side letters’ 587–8
- signaling 72–5
- Sikes v. McGraw-Edison Co.* 30
- Silberston, Z.A. 211
- Silicon Valley 83, 164, 234, 408
- similar/identical information 166, 207–9
- Singleton, S. 217
- Skin Deep 449
- Skor bar 11
- Slashdot 401
- small and medium enterprises 149–50
- small-scale innovation 194, 195–8, 198–200
- Smith v. Dravo Corp.* 114, 132

- social norms 238–40, 244–5
- software 158, 176–7, 212, 299–300, 300–301, 310–12, 322
 - open source 205, 206, 213, 214–16, 217–18, 219, 225
- source code 310–11, 312
 - of breathalyzer machines 423–5
- South Korea 580–81
- Southwest Research Institute v. Keraplast Technologies, Ltd.* 297
- Spain 9
- special master 383
- spillovers 227, 231, 241–2, 244
- spiritual value 522–4
- sports innovations 205
- Sports Management News (SMN) 289
- spying/espionage 9, 11, 80
- Standard Material Transfer Agreement 528
- standardized licenses clearinghouse 260–61
- start-ups 100
- state courts 102
 - alternative torts 92–7
 - crowded dockets 102
- State ex rel. Sports Management News, Inc. v. Nachtigal* 289
- state law 18, 81–3, 302, 334
- statutory law 21–2
- steam engines 203–4
- Stedman, J.C. 187
- Steinemann, A.C. 449
- Sterk, S.E. 86
- storage space 313–14
- Strandburg, K.J. 226, 239
- strict liability torts 559–60
- substantial secrecy 555
- substitute information/knowledge 166, 207–9
- summary information 475, 479, 485
- Sun Microsystems 360–62, 377
- Supremacy Clause 38, 97, 98, 100, 135
- Supreme Court, U.S. 16, 38
- Switzerland 187, 550–51, 565
- synoptic tables 548
- Tabor v. Hoffman* 50
- tacit know-how 169–70
- tangibility 556–7
- Taubman, A. 573–4
- tax preparation software 158
- TaxCut 158
- Taylor, C.T. 211
- Taylor, M. 217
- Taylor v. Blanchard* 341, 343
- technical drawings and specifications 300
- technological change 443
- technology exchange clearinghouse 259–60
- technology pool, open-source 190–93, 194
- technology transfer 148
- telecommunications spectrum allocation 242–3
- telephone calls, illegal interception of 292–4
- temporary restraining orders (TROs) 288–9
- Terarecon, Inc. v. Fovia, Inc.* 35–6
- term limit on secrecy protection 138
- territorial homelands 506–7, 509
- territorial restraints 352–6, 372–5
- test data exclusivity
 - international trade secrecy protection 549, 552, 568–90
 - Article 39(3) of the TRIPS Agreement 565–6, 568–82, 589
 - effects of TRIPS-plus standards 584–8, 589
 - FTAs and WTO accession 582–3
 - regulatory exclusivity in the U.S. 467–91
 - accelerating the time of disclosure 486–91
 - Hatch-Waxman Act 467–8, 469, 480–86, 488
 - origins of current administrative practice 473–80
- Texaco, Inc. v. Dagher* 370
- Thailand 586
- theft 39
- third party liability 559–60
- third party recipients of newsworthy secrets 288–95
- Tirole, J. 213
- Tobler, J. 11
- torts 112, 334

- confidentiality torts 91–8, 99, 100, 108
- environmental law 456–7
- relationship between trade secret law and other torts 133–5
- strict liability torts 559–60
- tort law and trade secret theory 115–18
 - see also* common law
- Toxic Substances Control Act (TSCA) 444, 453–4
- trade secret doctrine 111–15, 409–17
 - history of trade secret law 111–12
 - scope of trade secret law 112–15
- trade secret theory 115–21
 - commercial morality 120–21
 - contract law 118
 - property law 118–20
 - tort law 115–18
- Trade Secrets Act (TSA) *see* Economic Espionage Act
- trademarks 18, 47, 111
 - and incentives 166–7, 178–9
- traditional cultural expressions 496–7
 - see also* indigenous innovation
- traditional healing 510, 522, 526–7
- traditional knowledge *see* indigenous innovation
- Traditional Knowledge (TK) Digital Library 530, 531, 532
- training, employee 86–7
- transparency 406–41, 462
 - impact of trade secrecy on 417–32
 - potential solutions and future research 432–40
 - private provision of public infrastructure 417–18, 419–25, 434–6
 - public funded/sponsored research and contracts 418, 425–8
 - qualified 383, 466
 - trade secrecy doctrine 409–17
 - trade secrecy exception to FOIA 428–32
- Transparency Initiative 472
- trespass 68, 112
- Trevithick, R. 204
- TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) 146–7, 151, 248, 334, 486
 - Article 39 *see* Article 39 of the TRIPS Agreement
 - Article 40 563
 - Article 41 529
 - Article 44 562
 - indigenous innovation 498–9, 500, 536
 - negotiations 517–18, 568–9
 - TRIPS-plus standards 584–8, 589
- trust 264
- trusted institutions 383–4, 392–8, 466
- Tunisia 580
- TurboTax 158
- Twentieth Century Music Corp. v. Aiken* 322
- 2bigfeet.com 391
- tying 356–8
- unauthorized access 112
- uncertified patents 150
- uncopyrightable information 175
- unfair competition 38, 40, 112, 117–18, 133, 135
 - Article 39 of the TRIPS Agreement 514–20, 546–7, 548, 575
 - history of U.S. trade secret law 52–6, 553–4
 - dominance (1940 to 1980) 55–6
 - rise of 52–4
 - indigenous innovation 513–20
 - Restatement (Third) of 21–33, 40, 45, 57, 62, 280, 334, 413, 415, 458–9
 - Italian reform 140–41, 143, 151
- Uniform Trade Secrets Act (UTSA) 20–21, 44, 92, 97, 112, 131, 137, 178, 180, 247, 248
 - and Article 39 of the TRIPS Agreement 186, 537–9, 552–67
 - impact of pre-emption principles 563–5
 - limitations reflected in the language of Article 39 554–60
 - and confidentiality contracts 91
 - definition of a trade secret 25–8, 57, 227–8, 250, 334, 414–15, 521
 - displacing common law 33–44

- multiple regimes of confidentiality 81–3
- ownership 505
- pre-emption provision 33–44, 93–6
- Restatement (Third) of Unfair Competition and 21–33
- RSP requirement 14–15, 46–76
- uniqueness 166, 498–9
- United Kingdom (U.K.) 522
 - British Statute of Anne 320
 - Commission on Intellectual Property Rights (CIPR) 578
- United Nations Institute of Advanced Studies (UNU-IAS) 534
- United Nations Special Rapporteur on the right to health 578
- United States (U.S.) 164, 196, 248, 568
 - complaint against Argentina 573
 - Federal Trade Commission (FTC) 360, 383, 392–3
 - Food and Drug Administration *see* Food and Drug Administration (FDA)
 - FTAs 582, 587–8
 - Government Accountability Office (GAO) 454, 570, 588
 - history of trade secret law 49–58, 553–4
 - dominance of property theory 49–52
 - focus on reasonable precautions 57–8
 - rise and dominance of unfair competition 52–6
 - Office of Management and Budget 406
 - Restatements *see* Restatements
 - status of trade secret law 18–45
 - test data exclusivity 467–91
 - TRIPS Agreement negotiations 537, 539–41, 541–2, 545, 546–7, 548, 550–51, 551, 561, 564–5, 568–9
 - Unfair Trade Secrets Act *see* Unfair Trade Secrets Act (UTSA)
- United States v. Addyston Pipe Co.* 347
- United States Air Force (USAF) 430–31
- United States v. Arnold, Schwinn & Co.* 352
- United States v. E.I. duPont de Nemours & Co.* 353–4, 373–4, 375
- United States v. Gen. Elec. Co.* 346, 351
- United States v. Gen. Motors Corp.* 351
- United States India Mailbox case* 574–5
- United States v. Loew's, Inc.* 356
- United States v. Pilkington PLC* 354–6, 374
- United States Sporting Products, Inc. v. Johnny Stewart Game Calls, Inc.* 132
- United States Trade Representative (USTR) 570, 582
 - Special 301 Reports 572
- United Steelworkers of Am. v. Auchter* 461
- Universal Declaration of Human Rights (UDHR) 507
- unjust enrichment 38, 40, 65–6, 112, 133
- unpatentable subject matter 169–71
- unpublished works 323–6, 328–30
- Uruguay Round 539, 551–2, 568–9
- use or disclosure 23
- use rights 503, 506–9
- usefulness 166–7
- user-developed innovations 215
- USM Corp. v. Marson Fastener Corp.* 29
- utility model laws 191, 194, 195, 196
- Vaidhyathan, S. 400–401
- Verizon Comm'ns Inc. v. Law Offices of Curtis V. Trinko* 358
- vertical resale price agreements 347–50, 350, 351
- Viacom v. YouTube* 394–5
- Vickery v. Welch* 18, 340
- Vienna Convention on the Law of Treaties 574–5, 589
- virtual teams 219
- Visscher, F. de 249
- Volokh, E. 282, 437
- Von Hippel, E. 204–5, 208–9, 234, 238–9
- Von Krogh, G. 214, 234
- Voth, H.R. 495, 506, 511
- voting machines 382, 399, 419–23, 425

- Wark, M. 403
 Warren, S.D. 179–80
Washington Post 273
Washingtonian Publishing Co. v. Pearson 316–18
 Watt, J. 204
 websites 530–31, 535
 Wechsler, H. 22
 Weissman, R. 580
 Weizner, D. 393
 welfare 244
 ‘whistle-blowing’ statutes 274
 white hat SEO 387–8, 389–91
White Motor Co. v. United States 352
 wholesale duplication 190
 Wiesner, D. 120–21
 Wikipedia 401, 499
 Wilf, S. 458
 Wilson, M.P. 442
 wiretap law 292–3
 Wisconsin 34, 95
 ‘Wistar’s Balsam of Wild Cherry’ 343–4, 350, 373, 374
 work for hire doctrine 506
 World Health Organization (WHO) 577
 World Intellectual Property Organization (WIPO) 531, 541
 Intergovernmental Committee (IGC) 496–7, 507
 World Trade Organization (WTO) 573
 accession to 582–3
 wrongful means *see* improper means
 xenotransplantation 479–80
 Yahoo 386
 Yeadon, M. 522
 Young, F. 484
 Yu, P. 508
 Zimmerman, R. 10

