Index

abuse see market dominance abuse
administrative law enforcement
copyright protection problems 98, 99–100, 101–2, 103–4
supervising powers, unfair competition and trade secrets 121
liability for trade secret infringement 158–9, 160
unfair competition, trade secrets and know-how 158–9, 160
monopoly, and Anti Monopoly Law 297–8
regulation, telecommunications see telecommunications and the Internet, administrative regulation
trademark protection 61–3, 65, 73, 74, 76
advertising
Advertising law 377
comparative 115–16, 121, 125, 172
exaggeration or fraud in 52, 111 online 426–7
QBPC Ethical On-line Advertising Initiative 408
Aldrich, M. 431
Alford, W. 99
Alibaba and counterfeit products 281–2
Anti Counterfeit Trade Agreement (ACTA) 14
Anti Monopoly Law 18–20, 294–322 and administrative monopoly 297–8
and Chinese characteristics 297–300
competition law, history of approach to 294–6

and competition law, relationship between see intellectual property protection and competition law, and anti-monopoly law, relationship between and compulsory licence doctrine 331–2, 336
computer software, information technology and e-commerce 264–6
customer protection 297, 304, 311–12, 313, 320, 321
and franchises 298
future legislation 318–20
improvements in see intellectual property protection and competition law, improvements in China’s anti-monopoly law system
international factors, impact of 316–18
bilateral agreements 318
and international organizations 318
and policy and law of foreign governments 317
interpretation and enforcement problems 310–16
civil lawsuits and cost factors 311–12
civil lawsuits and time factors 311, 315
coordination with previous laws and regulations 312–13
coordination with sectoral regulators 313–14
and costs and efficiency 310
enforcement authorities’ coordination 310
injunction remedies 315
Chinese intellectual property and technology laws

judicial practice, unresolved issues in 314–16
and Ministry of Commerce (MOFCOM) 295, 298–9, 303–4, 305, 306, 310, 313
pricing and non-pricing monopoly, distinguishing between 310
and principle of case law 314
supportive rules and regulations, lack of 310–12
and IPR protection, relationship between 320–22
common goals 321–2
different ways of treatment 320–21
Lanzhou City pricing authority 296
laws and regulations, relevant 300–309
cases investigated and punished 305–9
financial industry mergers and acquisitions 304
foreign-invested enterprises (FIEs), and national security 304–5
horizontal and vertical agreements 300, 301
litigation rules, need for improvement in 311
market dominance abuse 301–3, 307–9
market dominance abuse, recent developments 302–3
monopoly agreements 300–301
procedural provisions 305–9
relevant markets, delineation of 309
residency status and market dominance abuse 307–8
whistleblowing, and pricing of monopoly activities 307
laws and regulations, relevant, mergers and acquisitions 303–5
cases investigated 306–7
exemptions 305
filing system 303–4
and national security 304–5
review factors 304, 306
as milestone in economic transition period 296–7
Nanjing Declaration of Self-discipline 296–7
and National Development and Reform Commission (NDRC) 295, 298–9, 307, 310, 313
and patent law, connections between 364
and separate legal systems of Hong Kong, Macau and Taiwan 299–300
and State Administration for Industry and Commerce (SAIC) 299–300, 302–3, 310–11, 313
state-owned enterprises (SOEs), special treatment for 298, 311, 313
and telecommunications 432–4
‘Ten Clauses of Competition’ 294–5
‘two tiers and three characteristics’ enforcement 298–9
and unfair competition and trade secrets 109
and WTO accession 295
see also competition law
anti-circumvention legislation, and competition law 342
technological measures for copyright protection, Hong Kong 190
Anti-Unfair Competition Law and computer software 249
and domain names 273, 274
information technology and e-commerce 257
and surface decoration 110, 111, 124
and trade secret infringements 145–6, 148, 150–51, 156, 158, 160
see also competition law; unfair competition and trade secrets
Archer, M. 233
architecture 84
artistic works and copyright 79, 80, 84, 85, 89, 91, 96–7
and e-commerce 275
e-commerce and legal environment 275
Hong Kong copyright 175, 176, 177, 178, 179, 180, 183
patents 199–200
audiovisual material, copyright protection 9–11, 12, 81, 94–5, 103
authorship right
  computer software copyright 243
  Hong Kong copyright 179–80
banned works, copyright protection 88–91
Bao, Y. 275
Beijing, e-commerce and legal environment 282–4
Bently, L. 82
Bergman, W. 347
bid rigging, and unfair competition 118–19, 123
bilateral trade agreements 21, 26, 318, 360
Bin, L. 2, 24
biopiracy, and patents 359–60
Brazil 21, 269, 351, 357, 359
cable
  and DSL operators, and telecommunications regulation 416
  networks, copyright protection 95
Cai, Q. 279
Cao, Q. 24
censorship, and copyright 7, 81, 88, 90–91, 97
Chang, Jack 367–410
character merchandising, personality rights and sponsorship, Hong Kong trademark law 165
Chen, Jialin 281
Chen, Jian 279
China-China Foreign (CCF) structures 414–15, 431
Chinese characteristics
  and Anti Monopoly Law 297–300
  special works with, and copyright protection 93
Chow, D. 2, 24
cinematographic works, copyright protection 81, 92, 97, 103
civil actions, copyright protection 96, 100, 101, 104–5
civil lawsuits and cost and time factors, Anti Monopoly Law 311–12, 315
civil liability for trade secret infringement 149–55
Clarke, D. 2, 24
Clarke, M. 107
click-wrap and shrink-wrap contracts, computer software 251–3
common law, Hong Kong trademark law see Hong Kong, protection of intellectual property, trademarks, common law unregistered
communications industry and improvements in China’s anti-monopoly law system 344–7
see also telecommunications and the Internet
competition law
  history of approach to 294–6
  and intellectual property protection see intellectual property protection and competition law and telecommunications see telecommunications and the Internet, competition law, applicable
see also Anti Monopoly Law; unfair competition and trade secrets compulsory licenses
  and Anti Monopoly Law 331–2, 336
  and derivative rights, competition law 331–2, 336
  Hong Kong patents 193
  patents 4, 29, 42, 351, 352–3, 354, 359, 362–4
see also licenses
computer software, information technology and e-commerce 239–67
  anti-monopoly law 264–6
  and contract law 239–40
  IP and monopoly abuse 240
  literary works 242
  musical works 242
  open source software 240
  and patent protection 239
  and State Administration for Industry and Commerce (SAIC) 265–6
  and TRIPS 241
Chinese intellectual property and technology laws

computer software, information technology and e-commerce, computer software
anti-unfair competition law 249
contract law 239–40, 250–51
and dispute resolution 251, 252–3
copyright law 239, 240, 241–6, 254–5, 288
authorship right 243
and back-up copies 244
computer software definition 242
copyright limitations 243–4
dissemination right 243
Dōjin work and blogs 255
infringement and liabilities 245–6, 254–5
lease right 243
public availability 242–3
publication right 242–3
registration of software 245
revision right 243
right of licensing 243
right of reproduction 243
and software modification 244
term of protection 244–5
main laws protecting 80, 81, 85, 241–55
moral rights 242
open source licenses 253–5
patent law 246–9
application examination criteria 247–8
business method-related applications 249
e-commerce and business-method related inventions 249
program to include rules and methods for mental activities 247–8
program to include technical solutions 247, 248
and pure computer programs 246–7
system management protection software 249
shrink-wrap and click-wrap contracts 251–3
system management software 249
and trade secrets 249
trademark law 249–50

computer software, information technology and e-commerce, e-commerce
contract law and data message conclusion 261–2
contract law, relevant rules in 261–2
and Digital Rights Management (DRM) 259–60
e-commerce practice 263–4
economic rights 254
Electronic Signature Law (ESL) 262
Guidance on E-payment 263
Guidelines for Online Transaction 263
legislation and practice 260–64
Measures for Electronic Certification Services 263
see also e-commerce and legal environment
computer software, information technology and e-commerce, information technology
anti-unfair competition law protection 257
copyright law protection and work created by compilation 256–7
Copyright Self-Service Agreement 254, 260
and Digital Rights Management (DRM) 257–60
internet security 255–60
legal protection for databases 256–7
main laws protecting 255–6
mobile phone networks and DRM 257
confidentiality
breach and trade secrets, Hong Kong see Hong Kong, protection of intellectual property, trade secrets and breach of confidence
obligation, and technology development contracts 143–5
obligation, employees and trade secrets 131–4, 136–8
see also unfair competition and trade secrets
Cong Lixian 268–93
Index

consumer protection
Anti Monopoly Law 297, 304, 311–12, 313, 320, 321
and competition law 326, 342, 343
e-commerce and legal environment 272, 277, 278, 279–80, 290–91
Hong Kong trademark law 169, 173 and Quality Brands Protection Committee (QBPC) 370, 371, 377
and trademarks 56, 57
contract law
click-wrap and shrink-wrap contracts, and computer software 251–3
and computer software 239–40, 250–53
and data message conclusion, computer software 261–2
and dispute resolution, computer software 251, 252–3
and principal office registration 261
and trade secrets 136–7, 138, 141, 142–3, 144
Cooter, R. 330
copyright
and counterfeit goods 7
and e-commerce 16, 274–7
electronic protection 16
fair use doctrine 333
Hong Kong see Hong Kong, protection of intellectual property, copyright
infringement, and e-commerce 275–6
legislative hierarchy 11–12
copyright protection 78–105
copyright law
and architecture 84
and artistic works 79, 80, 84, 85, 89, 91, 96–7
audiovisual material 81, 94–5, 103
autobiographic works 93
banned works 88–91
book publication 89
broadcasting, wireless-based
definition of 95, 103
cable networks 95
calendars 87–8
catch-all provisions 97–8
and censorship 7, 81, 88, 90–91, 97
cinematographic works 81, 92, 97, 103
copyright ownership 91–3, 103
copyrightability and exercise of copyright, difference between 90
copyrighted works, definition of 84–7
definition of copyright 82–4
and economic rights 83, 254
and expression of idea 85–6
and fixation 86–7
foreign films 81
and foreign owners of copyright 96–7
formulas 87–8
and freedom of speech 85–6
government documents 87
graphic work 85
ideas, protection of 87–8
and international law, impact of 78–81, 96–7
and Internet transmission of works 83–4, 97
legal entity work 91, 102–3
legal framework 82–95
legislative levels 81–2
listed rights in 83
moral rights 83
and musical works 84, 92
and national discrimination 89
and national security and banned works 89
neighboring rights 84, 93–5
news on current affairs 87
non-copyrighted works 87–91
numerical tables 87–8
oral works 86–7
and originality 86, 99
and patent protection, distinction between 85
performance rights 94, 103
and press control policy 88–9
qualifying requirements 85–6
reproduction in tangible form 86–7
service works 92–3
sources of 81–2
special works with Chinese characteristics 93
subsistence of 84
and subversive activities 88–90
and translations 83, 87
typographical design 94
unauthorized use, prohibition of 83
works in tangible form 84–5, 86
copyright law, legal interpretation and enforcement, problems with 96–100
administrative enforcement problems 98, 99–100, 101–2, 103–4
civil actions 96, 100, 101, 104–5
criminal cases 96, 100, 101
deterrent damages, need for 100
dispute settlement 102
domestic works 96–7
infringement, problems with proving 100, 104
and legal understanding of 99
and originality 86, 99
performance rights 94, 103
plagiarism 99
thresholds for criminal enforcement 100
copyright law, reform and future legislation 102–5
administrative enforcement problems 98, 99–100, 101–2, 103–4
audiovisual material 81, 94–5, 103
broadcasting, wireless-based 95, 103
cinematographic works 81, 92, 97, 103
civil actions 96, 100, 101, 104–5
legal entity work 91, 102–3
Qing dynasty reforms 78
reform, continuing 101–2
reform, recent 80–81
and registration 104
related regulations, problems with 103–4
successor rights 103
and taping and recording 104
trinity approach 101
unjustified provisions and loopholes, dealing with 103
and reproduction without authorization 402
sculpture 175, 176
technical measures, legal elements of 342–4
and trade secrets, relationship between 14, 130–31
copyright protection under network environment 23, 227–38
and China as developing country 236–7
copyright law improvements 234–6
and globalization effects 236–8
Information Network Transmission Right 234
and innovation 237–8
and intangible property 230, 231
knowledge patterns and network as technical pattern 228–9
legislation and judicial practice 230–34
legislation for possible problems, and local conditions 237
and Network Information Transmission Right 231
network technology and law of property 229–30
network technology as new way of human life 228
peer-to-peer (P2P) distribution 235
private rights and state regulations 235
and rental rights 231–4
symbols 229
systematization of law principle and integration with civil law system 235–6
and TRIPS 233, 235
Corbet, J. 334
Cornish, W. 183, 203, 205, 221, 224
counterfeit trade 7–9, 13–14
anti-counterfeit measures and
e-commerce 281–2
patents and Criminal Law 399
search and auction portals 17–18
and trademarks 66–7, 76
unfair competition and trade secrets
110–11, 121, 124–5
see also IP enforcement, and Quality
Brands Protection Committee
(QBPC)
court system
hierarchical nature of 2–3
People’s Courts 2–3, 72, 128, 135,
136, 307
criminal law
and copyright protection 96, 100,
101
and counterfeit goods see under IP
enforcement, and Quality
Brands Protection Committee
(QBPC)
and disclosure of business secrets
114
Hong Kong copyright see under
Hong Kong, protection of
intellectual property, copyright,
infringement
and trade secrets see unfair
competition, trade secrets and
know-how, criminal liability
and trademarks 65–8
customs
border protection improvement
and Customs Committee
390–92
Customs Protection of Intellectual
Property Rights (IPRCPR) 80
General Administration of Customs
of China (GACC) 384, 390–91
and quality brands see IP
enforcement, and Quality
Brands Protection Committee
(QBPC)
seizures through postal channels
391–2
damage awards
patents infringement cases 29, 43,
150–51, 362
unfair competition and trade secrets
111, 116, 117, 118–19
Deng Xiaoping 79, 299, 361
design patents 28, 33, 34, 35, 38
Digital Rights Management (DRM)
257–60
disclosure
of business secrets, civil liability for
113–14
covenants against, Hong Kong trade
secrets 211–15
of information, and e-commerce 283
patents source 28
see also unfair competition and trade
secrets
dispute resolution
copyright protection 102
e-commerce and legal environment
284–6
patents 27–8, 42–3
trademarks 56, 61–4
domain name
and anti-unfair competition 273, 274
trademark registration as 123–5
see also computer software,
information technology and
e-commerce; e-commerce and
legal environment
Dong, T. 324
duration of rights see time factors
e-commerce and legal environment 17,
268–93
artistic works 275
and artistic works 275
consumer protection 272, 277, 278,
279–80, 290–91
e-commerce definition 268
evolution of e-commerce 269–70
international law, influence of
286–8, 291
and internet penetration levels 269
legal system and practice 270–86
administrative shortcomings 289
Alibaba and counterfeit products
281–2
anti-counterfeit measures 281–2
commercial law similarities
290–91
copyright 16, 274–7
Copyright infringement 275–6
Current situation 271–82
And distribution right and communication to the public 275
Domain names and anti-unfair competition 273, 274
Dual-track system, suggestion for 290
eBay-EachNet joint venture and counterfeit products 281, 282
electronic contracts and corresponding laws 277–8
electronic payment system 278–9, 290
electronic signatures 271–2, 277, 278, 279, 289
Improvement suggestions 289–93
And information disclosure 283
Literary work copyright 274, 288
Ligation and dispute resolution 284–6
Ligation and electronic writs 285–6
Regional differences, Beijing and Shanghai 282–4
Safety and privacy issues 279–81, 289
Trademarks and domain names registration 272–4
Shopping network value 269–70
See also computer software, information technology and e-commerce
eBay-EachNet joint venture and counterfeit products 281, 282
Economic rights and copyright protection 83, 254
e-commerce 254
Economic benefit to owners, and trade secrets 129
Employees
Inventions, Hong Kong patents 192
Restrictions on former and restraint of trade 148–9
And trade secrets see unfair competition, trade secrets and know-how, employees
Employment, personal knowledge, skill or experience acquired at work see under Hong Kong, protection of intellectual property, trade secrets and breach of confidence equivalents doctrine, and patents 400–401
EU
Access and Interconnection Directive 419
E-Privacy Directive 427–8
Framework Directive for Electronic Networks and Services 309, 432, 433, 434
Universal Services Directive 437
Expression of idea, and copyright protection 85–6
Fair dealing exception, Hong Kong copyright 184–5
Fair use doctrine 332–3
Feng, P. 78
Feng, X. 86
Feng, Y. 86
Fernandez, G. 431
Financial industry mergers and acquisitions 304
Foreign films, copyright protection 81
Foreign nationals, National Treatment for, and patents 26
Foreign owners of copyright, and copyright protection 96–7
Foreign-invested enterprises (FIEs), and national security 304–5
Foreign-Investment Telecommunications Enterprises (FITE) see telecommunications and the Internet, and Foreign-Investment Telecommunications Enterprises (FITE)
Foreign-related patent agencies 28–9
Franchises 138, 298
Free trade agreements 21, 318, 357, 360
Future policy
Anti Monopoly Law 318–20
Copyright protection see copyright protection, copyright law, reform and future legislation
Quality Brands Protection Committee (QBPC) 405–9

trademarks 74

Gan, Y. 284
Gao, F. 272, 277, 285, 286, 290
Gao, H. 271
Gao, J. 271
Gao, Q. 24

GATS; GATT see under World Trade Organization (WTO)

genetic materials, patents 36, 359–60, 362

geographical indication

and trademarks 52–3, 54, 73

and TRIPS 336, 351, 355, 359

globalization

and copyright protection under network environment 236–8

financial crisis and IP enforcement 403

see also international factors
government see state

graphic work 85

see also artistic work

Guan, Y. 286
Guangdong 18, 282, 368, 407
Guo, W. 273
Guo Yimei 279, 290
Guo Yujun 284

Han, D. 24
He, Guo 25–45
He, Q. 286
Holznagel, B. 423

honesty

and credibility, violating principle of, trademarks 54, 60, 74

and impartiality, violating principle of, unfair competition 107, 108, 116–17, 137, 146

Hong Kong

Anti Monopoly Law 299–300

judiciary appointments 162–3

separate legal system 19

TRIPS compliance 15, 162

Hong Kong, protection of intellectual property, copyright 15–16, 174–91

artistic works 175, 176, 177, 178, 179, 180, 183

authorship and ownership 179–80
derogatory treatment, right to object to 175
duration of 177–8

and industrial designs 178–9

infringement 181–8, 220–21

anti-circumvention of technological measures for copyright protection 15–16, 190

authorising 184
criminal sanctions 188–91
criminal sanctions, and copyright Ordinance 188–90
criminal sanctions, organised and serious crimes Ordinance 191
criminal sanctions, prevention of copyright piracy Ordinance 190–91

education exception 185–6

exceptions 184–6

fair dealing exception 184–5

and interlocutory injunctions 176, 182

library exception 186

primary 181

remedies 188

and rental right 181

reproduction in a material form 183–4

reprographic reproduction exception 185–6

search orders 191

secondary 186–8

secondary, and infringing copies 187–8

and substantial copying concept 181–3

taking substantial part of a copyright work 183

literary works 174, 175, 177, 179, 180, 181, 182, 186, 187

moral rights 174–5

musical works 174, 175, 177, 180, 181, 186, 187

peer-to-peer (P2P) distribution 189

principal writer priority 178

restricted acts 181, 184

subsistence of 175–7

and fixation 176–7
no qualifying factors 177
original in a copyright sense 175
original work of one of specified
categories 175
Hong Kong, protection of intellectual
property, patents 191–202
application and grant of short-term
192
application and grant of standard
191–2
compulsory licenses 193
design, meaning of, under Ordinance
197–8
employees’ inventions 192
government use of patented
inventions 193
infringement under Ordinance
200–202
and civil proceedings 194
and co-ownership 194
design not substantially different
201
and exclusive right of registered
owner 200–201
interlocutory injunctions 194, 196
nature of infringing article 201–2
right of third party to continue
use under section 35 202
and novelty 195, 196
obviousness or lack of inventive step
195–6
property in, and applications 192
registrable designs 191, 196–200
corresponding design related to
artistic work 199–200
designs excluded from registration
199–200
and novelty 198–9
term of design registered under
Ordinance 199–200
types which can be registered 191
revocation grounds 194–5
rights conferred by patents and
patent applications 193–4
spare and replacement parts 197–8
terms granted under Ordinance 192
tie-in clauses 192–3
Hong Kong, protection of intellectual
property, trade secrets and breach
of confidence 202–26
bona fide purchaser in good faith of
confidential information 226
defences 224–6
existing law 203–5
information imparted under
circumstances importing an
obligation of confidence 216–20
information imparted under
circumstances importing an
obligation of confidence,
confidential information as
property 219–20
information must not be public
knowledge 205–7
interlocutory injunctions 208, 209,
210, 212–13, 215, 222, 225
and minimum intellectual effort 205
and permitted observation 206–7
personal knowledge, skill or
experience acquired at work
209–15
confidential information and
employment contract 210–11
covenants against disclosure
211–15
and objective reasonableness
210–14
and public interest in confidential
information 224–6
springboards and headstarts
document 207–9
third party disclosees of confidential
information 220–24
third party disclosees of confidential
information, and economic loss
223
and wiretapping 217
Hong Kong, protection of intellectual
property, trademarks 163–74
common law unregistered
and action for passing off 163–7
character merchandising,
personality rights and
sponsorship 165
damage or likelihood of damage
166–7
defendant’s representation, test of
deception or confusion
165–6
defendant’s state of mind 165–6
Index 449

descriptive trade names and acquisition of secondary meaning 164
explicit or implicit disclaimers of connection with plaintiff 166
interlocutory injunctions 163, 167
names and logos 164
non-utilitarian get-up as badge of recognition 164
parallel imports and passing off 166–7
personal names 164–5
plaintiff’s badge of recognition with relevant public 164
and plaintiff’s reputation or goodwill 163–5
proof of likely deception 166
reputation as purchaser rather than retailer 164
transnational reputation and goodwill 165
utilitarian get-up as badge of recognition 164
and names 164
registered 167–74
absolute grounds for refusal under TMO 168–9
collective trademarks 171
consumer protection 169, 173
criminal sanctions 173
defensive and well-known trademarks 171
definition and requirements 167–8
historical background 167
honest concurrent use and Registrar’s discretion 171
identical or similar marks 169–70
infringement of, and comparative advertising 172
infringement of, exceptions 173
infringement of, groundless threats 173
infringement of, parallel imports and exhaustion of rights 173
and ‘likely to deceive the public’ grounds 169
ownership and use of 171
protection of well-known 170–71
registrability of 168–71
registrability, term and scope of registration 171
relative grounds for refusal under TMO 169–70
revocation and declaration of invalidity 173–4
shape marks 168
sound, smell and color marks 168

Hu Kaizhong 106–26
Huang Young 294–322
human flesh cases 17, 280

India 20, 269, 357, 358, 359
industrial designs 26, 85, 178–9
Information Network Transmission Right 234
information technology see computer software, information technology and e-commerce, information technology
innovation
and copyright protection under network environment 237–8
and Quality Brands Protection Committee (QBPC) 404–5
intellectual property protection and competition law 323–47
and anti-monopoly law, relationship between 324–30
anti-competitive practices in abusing IPR 325–7
anti-competitive practices concerning exercise of IPRs 326–7, 337
and appointed technology source 327
artificial control over production time 329
changing nature of 324–5
and consumer protection 326, 342, 343
cross-licensing 326
and exclusive control by companies 328
grant-back requirements 326, 337
IP abuses, correction by anti-monopoly law 333–4
legal licensing and restrictive practices, distinguishing between 326–7

Rohan Kariyawasam - 9780857935229
Downloaded from Elgar Online at 12/15/2018 11:53:28PM via free access
and licence tying 327
and maintenance of monopoly 325–6
market power merger, excessive concentration of 327
new challenges 327–30
non-use of IP, regulations on acts of 328–9, 332
pooling arrangements 326
and public welfare 324
and refusal to license 325–6
and resale price maintenance 326
sleeping patents 328–9
standard-setting abuse 330
improvements in China’s anti-monopoly law system 338–47
anti-circumvention legislation 342
anti-monopoly law application to communications industry 344–7
anti-monopoly law, current 340
competition rules concerning IP, current 339
history and current state of anti-monopoly law involving IP 339–40
Jingdiao case study 340–42
primary and secondary infringements 344
technical measures, borderline protection of 343–4
technical measures, and computer software protection 341–3
technical measures, legal definition of 340–44
technical measures, legal elements of 342–3
and technology transfer 339–40
Tencent case study 344–7
international law, impact of 334–8
Paris Convention for the Protection of Industrial Property (PCPIP) 334–5
TRIPS (Agreement on Trade-Related Aspects of IPRs) 323, 335–8
measures preventing abuse and excessive monopoly 330–33
compulsory licence doctrine 331–2, 336
derivative rights and compulsory licensing 331
fair use doctrine 332–3
time limit doctrine 330–31
interlocutory injunctions
and Anti Monopoly Law 315
Hong Kong copyright 176, 182
Hong Kong patents 194, 196
Hong Kong, trade secrets and breach of confidence 208, 209, 210, 212–13, 215, 222, 225
Hong Kong trademark law 163, 167
patents, and provisional injunction system 44
International Copyright Treaties Implementing Rules 96–7
international factors
and Anti Monopoly Law see Anti Monopoly Law, international factors, impact of
transnational reputation and goodwill, Hong Kong trademark law 165
see also globalization
international law, impact of
and competition law see intellectual property protection and competition law, international law, impact of
copyright protection 78–81, 96–7
and e-commerce and legal environment 286–8, 291
and trademarks 72–4
Internet
copyright protection see copyright protection under network environment
regulation see telecommunications and the Internet
transmission of works, and copyright protection 83–4, 97
see also computer software, information technology and e-commerce
inventions
business-method related, and e-commerce 249
commissioned 31
detrimental to public interest 364
employees’, Hong Kong 192
government use of patented, Hong Kong 193
inventiveness requirement 39
joint 29, 30
lack of inventive step, Hong Kong patents 195–6
and patents 26, 30–31, 32
service invention 30–31, 131
IP enforcement, and Quality Brands Protection Committee (QBPC) 22, 367–410
achievements and development 380–402
auto windshield glass case 386
border protection improvement and Customs Committee 390–92
copyright, and reproduction without authorization 402
counterfeit packaging case 385
counterfeit tobacco case 385
criminal enforcement and Economic Crime Investigation Department (EICD) partnership 386–9
criminal enforcement, international program 388–9, 400–402
criminal enforcement and Operation Mountain Eagle 387–8
criminal enforcement, Shanghai Initiative 388–9
and customs see customs Ethical On-line Advertising Initiative 408
and future coverage of all IP issues 393–402
and General Administration of Customs of China (GACC) 384, 390–91
General Electric trade secrets case 384
Honeywell International counterfeit parts case 383–4
international conference 400–402
Microsoft pirated software case 383–4, 385
Nike International counterfeit shoes case 384
patents and doctrine of equivalents 400–401
and State Intellectual Property Office (SIPO) 394–9, 404, 407, 408
state recognition (Vice Premier Madam Wuyi) 380, 392–3, 404
ten-best-case award 380–86
ten-best-case award, marketing of 382
Time Warner and NBC Universal, pirated DVD case 383
trade secret protection 384
and transparency of IP reform 397
China Anti-counterfeiting Coalition (CACC) 368–9
China Association of Enterprises with Foreign Investment (CAEFI) 369
and consumer protection 370, 371, 377
counterfeit goods, estimated value of 370
counterfeiting, and criminal enforcement actions, strengthening 370–73
counterfeiting, and criminal enforcement actions, strengthening, judicial interpretation 371–3
‘Experience the Real China; Buy the Real Thing’ brochure 406
Ministry of Foreign Trade and Economic Cooperation (MOFTEC) 369
ongoing challenges 403–9
Best Practice and Enforcement Committee and Police Investigation Guidelines 405–7
future policy 405–9
global financial crisis and IP enforcement 403
innovation policies in business environment 404–5
Membership Service(s) Committee (MSC) 408–9
and Ministry of Commerce (MOFCOM) 404, 406, 407
QBPC history 367–9
successful investigation report
(Johnson & Johnson) 374–80, 385
constructive recommendations
and gaining government
support 380
counterfeit threat as business issue
375–6
enforcement agencies and
firefighting counterfeit
organizations 377–9
internal brand protection team
374–5
sense of honor, recognizing and
promoting 376–7
and State Technical Supervision
Bureau (STSB) 375

Japan 82, 95, 109, 360, 361, 365
Jiang, Z. 149
Jiang Zhipei xxv–xxviii, 288
joint
actions, expanding examples of, and
unfair competition 123
inventions 29, 30
joint ventures
and e-commerce 281, 282
equity, and Foreign-Investment
Telecommunications
Enterprises (FITE) 429–30
and technology transfer agreements
140
judicial appointments 2–3, 162–3
judicial practice
copyright protection under network
environment 230–34
counterfeiting and Quality Brands
Protection Committee (QBPC)
371–3
and trademarks 63–4, 73
unresolved issues in, Anti Monopoly
Law 314–16

Kariyawasam, Rohan 1–24,
411–37
know-how see unfair competition,
trade secrets and know-how
Kong Qingjiang 348–66
Kong, X. 335
Li, G. 416, 418
Li, H. 78
Li, J. 272, 273
Li, S. 285
Li Yufeng 78–105
Li Zuming 46–77
licences
compulsory see compulsory licenses
and funding, telecommunications
and the Internet 431
know-how licensing agreements
140–41
operating, and telecommunications
and the Internet 417–18
refusal, and competition law 325–6
literary works
computer software copyright 242
e-commerce copyright 274, 288
Hong Kong copyright 174, 175, 177,
179, 180, 181, 182, 186, 187
Liu Chuntian 82, 227–38
Liu, G. 361–2
Liu, M. 332–3
Liu, S. 281
Liu Xiaohai 127–61
Liu, Y. 96
lottery ticket sales, unlawful 117, 125
Lu, X. 99
Luo, C. 337
Luo, X. 24
Ma, X. 254
Macau 19, 299–300
McDonnell, B. 85
Mangin, E. 11
market dominance abuse
and Anti Monopoly Law 18–19,
301–3, 307–9
recent developments, Anti
Monopoly Law 302–3
residency status, and Anti
Monopoly Law 307–8
and telecommunications 433–4
unfair competition and trade secrets
123
Meng Zhaoping 239–67
mergers and acquisitions see Anti
Monopoly Law, laws and
regulations, relevant, mergers and
acquisitions
Ministry of Commerce (MOFCOM) and Anti Monopoly Law 295, 298–9, 303–4, 305, 306, 310, 313  
and Quality Brands Protection Committee (QBPC) 404, 406, 407  
and telecommunications and the Internet 421, 427  
Ministry of Industry and Information Technology (MIIT) 23, 412, 415, 416–17, 419–22, 424, 426, 428, 437  
Mitchell, A. 430  
mobile phone networks and Digital Rights Management (DRM) 257  
monopoly abuse, computer software, information technology and e-commerce 240  
Anti Monopoly Law see Anti Monopoly Law  
multinationals 20, 22  
and technology progress, impairment of 141–2  
moral rights computer software 242  
copyright protection 83  
Hong Kong copyright 174–5  
Musı, A. 289  
musical works and computer software 258  
and copyright 84, 92  
and Hong Kong copyright 174, 175, 177, 180, 181, 186, 187  
imported over online networks 427  
names geographical, and trademarks 52–3  
and Hong Kong trademarks 164  
see also domain names  
Nanjing Declaration of Self-discipline 296–7  
National Development and Reform Commission (NDRC) and Anti Monopoly Law 295, 298–9, 307, 310, 313  
and telecommunications and the Internet 416–17  
national discrimination and copyright 89  
and telecommunications and the Internet 425  
and trademarks 52  
national security and banned works 89  
and Chinese characteristics 297  
and foreign-invested enterprises (FIEs) 304–5  
and telecommunications and the Internet 427  
network environment, copyright protection see copyright protection under network environment  
Ng, W. 78  
non-use of IP, regulations on acts of 328–9, 332  
novelty and Hong Kong patents 195, 196  
and patents 28, 37–9, 42–3, 86, 362, 395  
Olympic Games, and telecommunications and the Internet 423–4, 429  
‘one country, two systems’ approach 1, 299  
open source software 240  
licenses 253–5  
Paris Convention for the Protection of Industrial Property (PCPIP) 26, 41, 42, 72, 107, 110, 122, 170, 172, 334–5  
patents 25–45  
artistic works 199–200  
and biopiracy 359–60  
compulsory licenses 4, 29, 42, 351, 352–3, 354, 359, 362–4  
content of patent right 40–42  
drug imports and administrative approval of patents 41  
exhaustion of rights 41, 332  
and identical products/processes 41  
importation rights 26, 41  
and scientific research, use in 41  
and temporary means of transport passing through territory, using patent 41
counterfeit, and Criminal Law 399
and doctrine of equivalents 400–401
and e-commerce 17
fair use doctrine 332–3
genetic materials 36, 359–60, 362
Hong Kong: see Hong Kong,
protection of intellectual
property, patents
infringement cases 42–5
application time limits 44–5
and evidence preservation system 44
exemption and regulatory
marketing approval 362
innocent infringement 41
provisional injunction system 44
and statutory damage awards 29, 43, 150–51, 362
inventions 26, 30–31, 32
detrimental to public interest 36
inventiveness requirement 39
joint 29, 30
licensing, and know-how licensing agreements 140–41
patent application abroad 362
patent law
and anti-monopoly law, connections between 364
and computer software: see computer software,
information technology and e-commerce, computer
software
revision and Doha Declaration 362–4, 394–5
patent law development 25–30
administrative examination 27–8, 41, 43
dispute settlement 27–8, 42–3
domestic priority system 26–7
first to file system 26
foreign-related patent agencies 28–9
importation rights 26, 41
industrial designs 26, 85
National Treatment for foreign nationals 26
New Patent Law 4–5, 22, 25–6, 104, 130, 131, 150, 332
novelty standard 28, 37–9, 42–3, 86, 362, 395
objection system, abolition of 27
‘offering to sell’ protection 27
ownership 30–31
and parallel importation 29
product, process extended to 26
source disclosure 28
term lengthening 26
and TRIPS 27–8
patent right
duration 41
force, strengthening 26, 27
limitations 40–42
patent right protection 26, 42–5
and copyright protection, distinction between 85
dispute settlement 27–8, 42–3
novelty standard 28, 37–9, 42–3, 86, 362, 395
‘offering to sell’ protection 27
prior art as defence 29, 37–9, 42–3, 362
and technology development contracts 144–5
process 33–40
active requirements 37–40
and animal and plant varieties 37
application invalidation 35–6
application rejection 35
applications 33–4
design patents 28, 33, 34, 35, 38
and disease diagnosis 37
examination system 34–6
mental activities, rules and methods for 36–7
patentee rights 40
photographs of 34, 42
prior art as defence 29, 37–9, 42–3, 332, 362
and scientific discoveries 36
usefulness requirement 40
utility model 26, 32–3, 35
sleeping 328–9
State Intellectual Property Office (SIPO) Amendment 363, 383, 394–9
and stocking of products 5, 193–4
technology development contracts and patent protection 144–5
and trade secrets 14, 130
types 26, 31–3
commissioned invention 31
design patents 28, 33, 34, 35, 38
indicator designs, two-dimensional 37
and nuclear transformation substances 37
service invention 30–31, 131
utility model 26, 32–3, 35
utility model 26, 32–3, 35
peer-to-peer (P2P) distribution 15, 16, 189, 235
Pendleton, Michael 162–226
performance rights 12–13, 94, 103
personality rights and sponsorship, Hong Kong trademark law 165
pharmaceutical compulsory licensing 353, 354, 359, 363
Pitofsky, R. 327
plagiarism 99, 154, 181–3
Posner, R. 83
press control policy, and copyright protection 88–9
privacy guidelines 17
and e-commerce 279–81, 289
EU E-Privacy Directive 427–8
private bulletin boards, Internet services regulation 425
monopoly IP rights 16
networks, Internet Protocol-Virtual Private Network (IP-VPN) services 428
rights and state regulations, copyright protection under network environment 235
trademark agencies, regulation of 76
procuratorates, responsibilities of 2–3
propaganda, false, and unfair competition 111–12
public availability, and copyright law in computer software 242–3
channels, trade secrets obtained through 146–7
communication and distribution right, e-commerce 275
deception grounds, and Hong Kong trademarks 169
interest in confidential information, Hong Kong trade secrets 224–6
interest, inventions detrimental to 364
knowledge, information not for, and Hong Kong trade secrets 205–7
public-facility enterprises, competition restriction of 119
trade secrets made known to, compensation for 364
trade secrets unknown to 128
welfare, and competition law 324
public health compulsory patent licenses 29
disease diagnosis, and patents 37
drug imports and administrative approval of patents 41
drugs, patent right limitations 29
medical instruments, patent right limitations 29
Qi, A. 277, 284
Qin, C. 268
Qing dynasty reforms, copyright protection 78
Quad countries 17, 21, 360
Quality Brands Protection Committee (QBPC) see IP enforcement, and Quality Brands Protection Committee (QBPC)
Red Cross 8, 52
regional trade agreements 21, 360
reproduction in tangible form 86–7, 183–4
reproduction without authorization, and copyright 402
reprographic reproduction exception, Hong Kong copyright 185–6
resale price maintenance, and competition law 326
restrictive practices, and competition law 326–7
reverse engineering, trade secrets obtained through 146–7, 150
Ruan, F. 106

sculpture 175, 176, 199, 228
see also artistic works

security
Internet, and computer software 255–60
measures, Internet services 422–3, 427–8
measures taken by rights owners 129–30
national, and Anti Monopoly Law 304–5

semiconductor technology licensing 29, 363, 364
Sha, W. 427, 430
Shang, M. 272

Shanghai
anti monopoly tribunal, independent 314
copyright reform and trinity approach 101
e-commerce and legal environment 282–4
Shanghai Initiative, and Quality Brands Protection Committee (QBPC) 388–9
Sherman, B. 82
Shou, B. 288
shrink-wrap and click-wrap contracts, computer software 251–3
Si, L. 268, 282
Song, G. 276

source codes, and copyright protection 130–31

springboards and headstarts doctrine, Hong Kong trade secrets and breach of confidence 207–9
Stallman, R. 253

State Administration for Industry and Commerce (SAIC) 5, 7, 19–20, 23
and Anti Monopoly Law 299–300, 302–3, 310–11, 313
and computer software, information technology and e-commerce 265–6
and telecommunications and the Internet 412, 421, 426, 433, 435

and unfair competition, trade secrets and know-how 158
State Intellectual Property Office (SIPO) 17, 28, 33–4, 363, 383, 394–9, 404, 407, 408
state recognition, and Quality Brands Protection Committee (QBPC) 380, 392–3, 404
state use of patented inventions, Hong Kong 193
state-owned enterprises (SOEs), special treatment for, and Anti Monopoly Law 298, 311, 313
Stigler, G. 98
substantial copying concept 154, 181–3
see also plagiarism
surface decoration 58, 60, 110, 111, 124
symbols and copyright 229

Taiwan 19, 299–300
taping and recording, and copyright protection 104
technical measures, legal definition of, and competition law 340–44
technical solutions, computer software, and program to include technical solutions 247, 248
technology development contracts and confidentiality obligations 143–5
and patent protection 144–5
technology transfer and competition law 339–40
joint ventures and trade secrets 140
telecommunications and the Internet 411–37
administrative regulation 412–21
basic and value-added services, distinction between 415
basic and value-added services, and Internet 415–16, 418
and cable and DSL operators 416
China-China Foreign (CCF) structures 414–15, 431
end-users’ charges regulation 420
hierarchical nature of 413–14, 416–17
interconnection provisions 419–20

Rohan Kariyawasam - 9780857935229
Downloaded from Elgar Online at 12/15/2018 11:53:28PM via free access
international telecommunication gateways with the MIIT 437
Leading Telecommunication Business Operators (LTOs),
special provisions for 419–20
and Ministry of Industry and Information Technology (MIIT) 23, 412, 415, 416–17, 419–22, 424, 426, 428, 437
and New Telecoms Law 417, 436
and operating licences 417–18
registered capital threshold 418
sections 414–15
and tariffs 420–21, 436
Classification of Telecommunications Services
annex 414, 415, 416, 428
competition law, applicable 432–5
Anti Monopoly Law 432–4
and dominant market position 433–4
Leading Telecommunications Business Operators (LTOs),
regulations for 419–20, 434–5
EU Access and Interconnection Directive 419
EU E-Privacy Directive 427–8
EU Framework Directive for Electronic Networks and Services 309, 432, 433, 434
EU Universal Services Directive 437
foreign operators 23
and Foreign-Investment Telecommunications Enterprises (FITE) 414–15, 428, 429–31
and China-China Foreign (CCF) structures 414–15, 431
and equity joint ventures 429–30
foreign equity cap 436–7
licensing and funding 431
Internet services regulation 421–9
bulletin boards, private 425
Communication Network Protection Measure 427
convergence issues 423
electronic messaging services (EMS) 426
elink services 425–6
Internet Protocol-Virtual Private Network (IP-VPN) services 428
and MIIT 421–2, 424, 426, 428
musical content, imported 427
online advertising 426–7
records of services provided 422–3
security measures 422–3, 427–8
and State Administration of Radio, Film and Television (SARFT) 424
television broadcast licence 425
television programming over mobile and internet (IPTV) 423–5
Trojan Horse and Botnet activities 427
VATs operating permit 422
and Voice over Internet Protocol (VoIP) 428
and Ministry of Commerce (MOFCOM) 421, 427
and National Development and Reform Commission (NDRC) 416–17
and national discrimination 425
and national security 427
next generation networks (NGN), layering concept 429
and Olympic Games 423–4, 429
regulation 22–3
and State Administration for Industry and Commerce (SAIC) 412, 421, 426, 433, 435
telecommunications operators 412
television broadcasting 423–5
‘Ten Clauses of Competition’, Anti Monopoly Law 294–5
ten-best-case award, Quality Brands Protection Committee (QBPC) 380–86
third party disclosures of confidential information, Hong Kong, trade secrets 220–24
liability for trade secrets obtained in good faith 151–3
time factors
Anti Monopoly Law, civil lawsuits 311–12
artificial control over production time, and competition law 329
copyright duration, Hong Kong 177–8
patent infringement application 44–5
patents infringement cases, application time limits 44–5
patents, term lengthening 26
term of protection, and computer software and copyright law 244–5
time limit doctrine, and competition law 330–31
tort litigation see unfair competition, trade secrets and know-how, tort litigation
trade secrets
and computer software 249
and copyright, relationship between 14, 130–31
Hong Kong see Hong Kong, protection of intellectual property, trade secrets and breach of confidence
and patents 14, 130
protection, and Quality Brands Protection Committee (QBPC) 384
and unfair competition see unfair competition and trade secrets
trademarks 46–77
and Action Plan on IPR Protection 76
and computer software 249–50
definition 46–7
and domain names registration 272–4
fair use doctrine 333
future legislation
application by electronic means 74
increase in types 74
Original Equipment/Entrusted Manufacture (OEM) 74
retraction regulations 74
and geographical indication, and TRIPS 336, 351, 355, 359
Hong Kong see Hong Kong, protection of intellectual property, trademarks
infringement
cessation of 64
compensation 6–7, 73, 74
compensation, problems with amount 71–2
determination 57–60, 73, 74, 76
of existing rights 53–4, 57–9, 61–4
forgery 111, 121
honesty and credibility, violating principle of 54, 60
late applications 54
legal liability for 64–8
and refusal, absolute grounds for 52–3
and refusal, relative grounds for 53–5
and reservation after end of validity 55
international law, impact of 72–4
certification marks 49, 73
collective marks 49, 73
exclusive use, temporary measures to protect 73
and geographical indication 52–3, 54, 73
and natural persons 73
and right of priority 73
judicial protection 63–4, 73
law enforcement and interpretation differences 68–72
and color 5, 69
similarities, problems with 69
laws and regulations, removal of mark 55
laws and regulations 47–68, 73–4
administrative protection 61–3, 65, 73, 74, 76
advertising, exaggeration or fraud in 52
application after validity expires 55
certification marks 49, 73
civil liability 64–5, 76
classification 49–50
collective marks 49, 73
commercial 49–50
commodities requiring 47, 49, 57, 74
and consumer protection 56, 57
counterfeit goods 66–7, 76
criminal liability 65–8
dispute resolution 56, 61–4
distinctive characteristics, problems with 68–9
false representation of 57
fines imposed 76
forged 58, 67–8, 76
and geographical indication 52–3, 54, 73
and geographical names 52–3
grant registration 51
identical 57, 58, 59, 60, 65–6
imitation 58, 59, 111, 124
and manufactured commodities, crude 57
modification of mark 56
and national discrimination 52
opposition petition 51
preliminary examination and approval and announcement 51, 59
principle of first application 51
principle of right of priority 52
private trademark agencies, regulation of 76
rectification of 56–7
registered 49, 50–52
replacement without consent 58
representations, illegal 67
revocation of 55–6
service marks 49
surface decoration 58, 60
trademark protection 57–68
over-run goods 402
Quality Brands Protection Committee (QBPC) see IP enforcement, and Quality Brands Protection Committee (QBPC)
registered
protection of 57–9, 74
registration 46–7
registration application and examination 50
registration applications, number of 76–7
registration as domain name 123–5
surrender of 55
three-dimensional 5, 46, 53, 69
and unfair competition 60, 76
unregistered 50
and application for registration by illicit means 71
protection of 59–60, 74
well-known, problems with determination of 70, 73, 76
translations, and copyright 83, 87
transnational reputation and goodwill
Hong Kong trademark law 165
see also international factors
TRIPS see World Trade Organization (WTO), TRIPS
Trojan Horse and Botnet activities 427
‘two tiers and three characteristics’ enforcement, Anti Monopoly Law 298–9
Ulen, T. 330
unfair competition and trade secrets 13–15, 106–26
acts of unfair competition 106–8
fair competitive order, violation of 107–8
and market competition 108
and tort law 108
additional forced purchase 117–18
advertising, exaggeration or fraud in 52, 111
Anti-Unfair Competition Law, ideas for improving counterfeiting, suggested additional types of 124–5
dominant market position abuse 123
and joint actions, expanding examples of 123
and market confusion 124
supervisory powers 125
trademark registration as domain name 123–5
Anti-Unfair Competition Law, problems of implementing 120–22
administrative law enforcement organs, supervising powers of 121
and cybersquatting 121
scope of acts 120–21
bid rigging 118–19, 123
business defamation 115–16
Chinese intellectual property and technology laws

- Business secrets, infringement of 112–15, 125
- Civil liability for disclosure of business secrets 113–14
- Commercial bribery 116–17
- Comparative advertising 115–16, 121, 125
- Competition restriction of government organs 119–20
- Of public-facility enterprises 119
- Consumer protection 110, 117, 118
- Damage compensation 111, 116, 117, 118–19
- Definition of unfair competition 108
- Dumping 117
- Fabrication of false facts 115–16
- Honesty, and impartiality, violating principle of 107, 108, 116–17, 137, 146
- Legal provisions
  - Cessation of illegal acts, ordering 111, 113, 118, 119, 149–50, 155
  - Implementation of law, problems with 120–22
  - Improvements, suggestions for 122–6
  - Liability provisions, problems with 121–2
  - Operability, suggested improvement of 124–5
  - Lottery ticket sales, unlawful 117, 125
- Perfect competition definition 106
- Sales with unreasonable conditions 117–18
- Trademark forgery and imitation 111, 121, 124
- Types of unfair competition 109–12
- And anti-monopoly laws 109
- Confusion of commodity 110
- Counterfeiting of goods 110–11, 121
- False marking 110
- False propaganda 111–12
- Separate legislative framework model 109
- Suggestions for expanding 122–4
- Unfair competition act, imprecise definition of 120
- Unfair competition act, redefining term 122, 123
- See also confidentiality
- Unfair competition, trade secrets and know-how 127–61
- Administrative liability for trade secret infringement 158–9, 160
- And Anti-Unfair Competition Law 145–6, 148, 150–51, 156, 158, 160
- ‘Capable of bringing economic benefit to the owners’ term 129
- Civil liability for trade secret infringement 149–55
- Compensation for losses 150–51
- Competition restriction cases, principles followed People’s Courts 136
- Concrete terms of trade secret 128
- Confidential information, protection of 129–30, 131–4, 136–8, 140–41, 143–5, 147, 152
- Contract Law and trade secrets 136–7, 138, 141, 142–3, 144
- Copyright and trade secrets, relationship between 130–31
- Criminal liability
  - And encroachment upon trade secrets 155–7
  - For trade secret infringement 155–8, 160–61
  - For trade secret infringement, and punishment 157–8
- Employees
  - Competition restriction and liquidated damages 135
  - Competition restriction obligations 134–6, 148–9
  - Confidentiality obligation 131–4, 136–8
  - Restrictions on former and restraint of trade 148–9
- And franchises 138
- Joint ventures and technology transfer agreements 140
- Know-how licensing agreements
  - Consequences of breaching 142–3
  - Invalid clauses 141–2
know-how obtained in good faith, and payment of royalties 152–3
and late payment of fee 142–3
and patent licensing 140–41
and scope of exploitation 139–40
valid clauses in 139–41
and warranties of licensor 141
legislative trends 160–61
management secrets obtained in good faith 153
patents and trade secrets, relationship between 130
‘right owners have taken security measures’ term 129–30
service invention patents 131
and State Administration for Industry and Commerce (SAIC) 158
and substantial copying 154
technology development contracts and confidentiality obligations 143–5
monopoly and impairment of technology progress 141–2
and patent protection 144–5
and protection of trade secrets 143–5
third party liability for trade secrets obtained in good faith 151–3
tort litigation
interim measures in civil procedure 154–5
and plaintiff’s burden of proof 153–4, 160
problems with 153–5
and trade secrets 108, 137–8
trade secrets
definition 127–8
infringement by malicious third parties 148
infringement and legal liability 145–59
as intangible asset 133, 138
legally obtained but disclosed to others 147
licensing agreements 138–43
made known to the public, compensation for 151
obtained by illegitimate means 146–7
obtained legally in employment relationships, protection of 131–6
obtained through public channels 146–7
obtained through reverse engineering 146–7, 150
obtained through transactions, protection of 136–45
‘unknown to the public’ term 128

Von Lohmann, F. 259
Voon, T. 430
Wan, Y. 272
Wang, H. 285
Wang, L. 290
Wang, Q. 87, 93
Wang, R. 270
Wang, X. 327
web technology see copyright
protection under network environment
We, Z. 86
Wong, L. 391
World Intellectual Property Organization (WIPO)
Copyright Treaty (WCT) 13, 79, 95, 103, 233, 274–5, 288, 342
Paris Convention for the Protection of Industrial Property (PCPIP) 26, 41, 42, 72, 107, 110, 122, 170, 172, 334–5
trademarks and domain names registration 273
World Trade Organization (WTO) 7, 14, 27
Anti Monopoly Law, and WTO accession 295
Appellate Body 9, 10–11, 12, 81, 90–91, 354
Dispute Settlement Body (DSB) 7, 9, 21, 90, 353, 359
e-commerce definition 268
e-commerce legislation 288
Chinese intellectual property and technology laws

GATS (Fourth Protocol) 9, 10, 11, 288, 417
GATT 9, 10, 79, 354
member, international concerns over 348–9
necessity test 10, 11
semiconductor technology licensing 363, 364
World Trade Organization (WTO), TRIPS
biopiracy 359–60
and compulsory licensing 351, 352–3, 354, 359, 362–4
and computer program protection 288
and computer software, information technology and e-commerce 241
Copyright Law revision 80, 90
and copyright protection under network environment 233, 235
and Doha Declaration 318, 350–64, 394–5
and essential medicines 352–3
geographical indications protection 359
and Hong Kong protection of intellectual property 15, 162
infringement of trade secrets by malicious third parties 148
and international rule-making expectations 360–62
IPR, attitude towards 358–60
and national flexibility 351–2, 354, 355–6, 358–9
national treatment principle for foreign works 97
patent law revision and Doha Declaration 362–4
and patents 27–8
pharmaceutical compulsory licensing 353, 354, 359, 363
prior informed consent 359–60
and protection of well-known trademarks 170–71
and public health 351, 352–3, 354, 358–9, 363
reiteration of rights 351–2
safeguarding against abuse of IPSs 173
and trade barriers 357–8, 360
trade-related aspects 335–8
and trademark law revision 73
trademarks and geographical indication 336, 351, 355, 359
TRIPS-plus 356, 360
uncertainties, clarification of 352–3
Wu, H. 82
Xu, C. 86
Xu Shiying 323–47
Xue, H. 11, 81, 82, 292
Yang, C. 96
Yang, F. 273
Yang, Jianzheng 271
Yang, Jingyu 361
Yang, L. 280
Yao, H. 89
Yeo, Y. 416–17
Yin, X. 337
Yu, D. 427, 430
Yu, Z. 278, 279
Zhan, L. 287
Zhang, C. 286, 291
Zhang, L. 272
Zhang Ping 239–67
Zhang, Y. 87
Zhang Zhe 294–322
Zhao, B. 278, 279
Zhao, X. 413
Zheng, C. 11, 81, 82
Zhu, J. 24