Index

Acquah, D. 361–76
administrative authorities’ role, legal transplant 53–9
administrative protection, judicial enforcement mechanisms 322–3, 325, 326, 327–8
Alaminos, D. 151, 153
Alford, W. 7, 8, 11, 20, 22, 23, 32, 44, 46, 48, 49
Allison, J. 299
Andenaes, J. 341
Andrew, C. 122
Andrews, J. 183
Anttila, I. 341
appeal courts 193, 203, 306, 315
Apple iPad trademark infringement 145–6
art law and resale rights 120–38
art law and resale rights, Chinese perspective 121–5, 134–7
art galleries, ages and business practices 136
art law, need for 122–4
artistic creation and propaganda 121
artists’ income levels 135
artists’ tax paying and record keeping 135–6
Auction Law 123
Copyright Law protection 123, 134, 135
definition of works of fine art 124
droit de suite, auction companies’ concerns 137
droit de suite awareness levels 136–7
droit de suite legislation introduction 124–5, 134–7
European system comparisons 134
freedom of artistic creation 122–3
‘ink and wash’ paintings and authentication concerns 137
photographic works 123
world art market share 122
young artists, effects of reselling of artworks 135
art law and resale rights, European origins of droit de suite 125–33
artists’ share of work’s increased resale value 132
bilateral treaties with third countries 134
Chinese system comparisons 134
collective management system 129
and copyright law 130–33
exceptions 127
‘fair’ and ‘non-discriminative’ way to reward artists 132
history and objectives 125–7
legitimacy concerns 132–3
location shopping concerns 128
‘original works’ of the artists or ‘one of a limited number’ 127
partial harmonization and competition distortion 126, 127–8
Resale Right Directive 120, 126–8, 129–30, 132
risk sharing benefits 129
transaction costs 128, 129
Asp, P. 341, 343, 344, 345
audio and video recordings 57, 70–71, 221–4
Film Copyright Association (CFCA), China 220
Australia, US free trade agreement (AUSFTA) and patent linkage 169–71
author’s own intellectual creation as harmonized concept 94–9
‘bad faith’ assertions, standard essential patents (SEPs) 256, 263, 264
Bai, J. 297, 298
Bakardjieva-Engelbrekt, A. 232
Baker, B. 170
Ballardini, R. 17, 18, 120–38
Banterghansa, C. 128
Baolin, Y. 121
Barazza, S. 282
basic people’s courts 320, 321, 325, 326, 334
Bently, L. 6, 12
Berne Convention 25, 45, 69–70, 72, 74, 125, 333
see also Paris Convention; TRIPS Agreement
Bessen, J. 11–12, 234
Bolar exemption, patent linkage 173, 175–6
books
Memorandum of Understanding on out-of-print books 201
Protection for Books and Journals Regulation 57–8
Bosworth, D. 290
Boyle, J. 40
Bradsher, K. 146
Braithwaite, J. 286
Bruun, N. 1–2, 18, 43–64, 120, 139, 162, 318–36
Bulow, J. 163
Burkitt, L. 180
Burris, S. 16
Cairns, J. 9
Canada, patent linkage system 182
Cao, C. 27
Cao, J. 181, 319
Cao, Q. 293
Chappatte, P. 251
Chaudhri, J. 301
Chen, J. 171
Chen, T. 184
Chien, C. 293, 294, 295
China, legal cases
Castel Freres v. Trademark Review and Adjudication Board and Li Daozhi 150
Dazhong Banchang v. Baidu.com 156–7
DuPont v. Guowang Domain Name 54
Hong Kong Meiyi v. Patent Re-examination Board 54
Honghe 160
Huawei v. IDC 255–6, 274, 275–6, 278–82
JianKang Diyi v. Trademark Review and Adjudication Board 149–50
Jiu Qi Software Co. v. Tian Cheng Software Co. 103
Junxiong Zhang v. PRC 357
Kabushiki-gatasha Ryōhin Keikaku v. the Trademark Review and Adjudication Board, Jingmian Textile Ltd. 158
Lingzhi v. Cui Huansuo, Du Xinhua 157
MCSC (Musical Copyright Society of China) v. Beijing October Days Culture Media 235, 236–40
Owen 159
Ownership of the Patent Pile Formation by Drilling Hole and Pressurizing Mortar 54
Pfizer v. Jiangsu Lianhuan, Jiankang Xingianian, Guangzhou Weierman 159
Product Manual 101
Puma v. taobao.com 156
Shantou Kangwang v. Trademark Review and Adjudication Board 150
Shanxi Jinyu Pumping Co. v. Shanxi Linglong Pumping Co. 101
Teaching Plan 101
Tiansi v. Trademark Review and Adjudication Board and Wei Tingjian 149–50
TV guidance 53–4
UGG 158
Wang Tongyi v. Fang Shiming 104
Xue Huahe v. Yan Yaya 101–2, 106
Zhou Lin v. Aomei & Huaao 53
China, legislation
Auction Law 123
Civil Procedure Law 253
Copyright Act 50, 54, 55, 59, 193
<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright Law revision see intellectual property law revision, China, Copyright Law</td>
<td></td>
</tr>
<tr>
<td>Customs Regulations</td>
<td>39</td>
</tr>
<tr>
<td>EU–China Action Plan on customs cooperation</td>
<td>209</td>
</tr>
<tr>
<td>EU–China Joint Customs Cooperation Committee (JCCC)</td>
<td>373</td>
</tr>
<tr>
<td>EU–China Strategic Framework for Customs Cooperation 2014–2017</td>
<td>373–5</td>
</tr>
<tr>
<td>General Principles of Civil Law (1985)</td>
<td>50</td>
</tr>
<tr>
<td>Images Copyright Society (ICSC)</td>
<td>219–20</td>
</tr>
<tr>
<td>Invention Reward Statute (1963)</td>
<td>48</td>
</tr>
<tr>
<td>Laws Applicable to Foreign-Related Civil Relations</td>
<td>281–2</td>
</tr>
<tr>
<td>Music Copyright Society (MCSC)</td>
<td>218, 219, 221–2, 224, 225–7, 235, 236–40</td>
</tr>
<tr>
<td>National Copyright Administration of China (NCAC) 66–7, 70, 71, 72, 73, 74</td>
<td></td>
</tr>
<tr>
<td>Patent Act revision 191, 203</td>
<td></td>
</tr>
<tr>
<td>Patent Law 21, 22, 24, 25, 26, 27–8, 171, 253, 254, 255</td>
<td></td>
</tr>
<tr>
<td>Patent Law revision see intellectual property law revision, China, Patent Law</td>
<td></td>
</tr>
<tr>
<td>Protection for Books and Journals Regulation</td>
<td>57–8</td>
</tr>
<tr>
<td>Regulation on the Customs Protection of Intellectual Property 39, 45, 365–6</td>
<td></td>
</tr>
<tr>
<td>Regulation on the Implementation of the Copyright Law (CRIC 2013) 113, 114</td>
<td></td>
</tr>
<tr>
<td>Regulations on Copyright Collective Management 213–14, 219, 229, 237, 238, 239, 240, 241, 245</td>
<td></td>
</tr>
<tr>
<td>Regulations for the Protection of Computer Software 69–70, 103</td>
<td></td>
</tr>
<tr>
<td>State Administration for Industry and Commerce (SAIC) 205</td>
<td></td>
</tr>
<tr>
<td>State Food and Drug Administration (SFDA) 171–2, 173, 175, 176, 177, 178–80, 181, 183, 184, 186</td>
<td></td>
</tr>
<tr>
<td>State Intellectual Property Office (SIPO) 175, 182, 183, 192, 195, 204</td>
<td></td>
</tr>
<tr>
<td>Technology Improvement Statute (1963) 48</td>
<td></td>
</tr>
<tr>
<td>Tort Law 253</td>
<td></td>
</tr>
<tr>
<td>Trademark Act 45, 50, 55, 59, 145, 146–8, 149–50, 155–6, 159</td>
<td></td>
</tr>
<tr>
<td>Trademark Act revision 192–3, 203</td>
<td></td>
</tr>
<tr>
<td>Trademark Law 21–3, 24, 28</td>
<td></td>
</tr>
<tr>
<td>Trademark Law revision see intellectual property law revision, China, Trademark Law</td>
<td></td>
</tr>
<tr>
<td>Unfair Competition Law 25, 75, 80, 82–3, 85</td>
<td></td>
</tr>
<tr>
<td>Written Works Copyright Society (CWWCS) 219</td>
<td></td>
</tr>
<tr>
<td>Chinese Academy of Social Sciences see intellectual property law revision, China, Chinese Academy of Social Sciences (CASS draft)</td>
<td></td>
</tr>
<tr>
<td>Choi, A. 134</td>
<td></td>
</tr>
<tr>
<td>Coase, R. 217</td>
<td></td>
</tr>
<tr>
<td>collecting societies, features distinguishing from collective management 215, 217</td>
<td></td>
</tr>
<tr>
<td>collective rights management 213–49</td>
<td></td>
</tr>
<tr>
<td>art law and resale rights, European origins of droit de suite 129</td>
<td></td>
</tr>
<tr>
<td>EU Collective Management Directive 201, 207</td>
<td></td>
</tr>
<tr>
<td>exclusive licence agreement 238, 240, 241, 242</td>
<td></td>
</tr>
<tr>
<td>governance 239–46</td>
<td></td>
</tr>
<tr>
<td>institutional change 233</td>
<td></td>
</tr>
<tr>
<td>legal transplant theory 233–4, 248–9</td>
<td></td>
</tr>
<tr>
<td>licensing platforms 234</td>
<td></td>
</tr>
<tr>
<td>non-practising entities (NPEs) 234, 235</td>
<td></td>
</tr>
<tr>
<td>patent trolls, negative impact 235</td>
<td></td>
</tr>
<tr>
<td>private patent pools 234</td>
<td></td>
</tr>
<tr>
<td>rights intermediaries 234–5, 244, 245</td>
<td></td>
</tr>
<tr>
<td>technological change effects 234, 243</td>
<td></td>
</tr>
</tbody>
</table>
collective rights management, China 213–31
Audio-Video Copyright Association (CAVCA) 219, 221–4
blanket licences, widespread adoption of 215, 216
collecting societies, features distinguishing from 215, 217
Copyright Law 218–19, 220, 224–7, 228, 229, 237–9
definition 214
enforcement and management of licences, reducing costs of 216
and European continental law system 229–31
extended collective licensing and Copyright law amendment 224–7
Film Copyright Association (CFCA) 220
future of 228–31
history 218–20
Images Copyright Society (ICSC) 219–20
and information society 220, 226
and international trends 229–31
Internet, copyright issues related to 218
karaoke entertainment enterprises (KOEEs), collection of levies from 216, 221–4, 227
market economy effects 228–9, 243–4, 247
Music Copyright Society (MCSC) 218, 219, 221–2, 224, 225–7, 235, 236–40
Regulations on Copyright Collective Management 213–14, 219, 229, 237, 238, 239, 240, 241, 245
transaction costs reduction 216–17
Written Works Copyright Society (CWWCS) 219
and WTO accession 218, 220
collective rights management, collective management organizations (CMOs), Europe
collective rights management, collective management organizations (CMOs), Europe
Copyright Act, China 50, 54, 55, 59, 193
Copyright Law, China 22, 23, 25, 28, 123, 134, 135, 218–19, 220, 224–9
Copyright Law, China, revision
see intellectual property law revision, China, Copyright Law
monopoly concerns 238, 247–8
as non-profit organizations 215, 217, 228–31
restrictions on creator’s freedom 240–43
statutory monopoly 215, 228–31
trust agreement 238, 240–41
Colston, C. 339
competition law
art law and resale rights 126, 127–8
and collective rights management 242–3
and standard essential patents (SEPs) 253, 258–60, 261–2
Unfair Competition Law, China 25, 75, 80, 82–3, 85
complicity regulation, criminal enforcement of IPR 349–50, 354
computer software, Regulations for the Protection of Computer Software 69–70, 103
computers 25, 69, 70, 206, 309, 311, 312
see also technology
Confucianism influence 46–7, 48
Contreras, J. 271
copyright
art law and resale rights 130–33
collective rights management see collective rights management
Copyright Act, China 50, 54, 55, 59, 193
Copyright Law, China 22, 23, 25, 28, 123, 134, 135, 218–19, 220, 224–9
Copyright Law, China, revision
see intellectual property law revision, China, Copyright Law
Confucianism influence 46–7, 48
Contreras, J. 271
copyright
art law and resale rights 130–33
collective rights management see collective rights management
Copyright Act, China 50, 54, 55, 59, 193
Copyright Law, China 22, 23, 25, 28, 123, 134, 135, 218–19, 220, 224–9
Copyright Law, China, revision
see intellectual property law revision, China, Copyright Law
Confucianism influence 46–7, 48
Contreras, J. 271
copyright
art law and resale rights 130–33
collective rights management see collective rights management
Copyright Act, China 50, 54, 55, 59, 193
Copyright Law, China 22, 23, 25, 28, 123, 134, 135, 218–19, 220, 224–9
Copyright Law, China, revision
see intellectual property law revision, China, Copyright Law
Confucianism influence 46–7, 48
Contreras, J. 271
copyright
art law and resale rights 130–33
collective rights management see collective rights management
Copyright Act, China 50, 54, 55, 59, 193
Copyright Law, China 22, 23, 25, 28, 123, 134, 135, 218–19, 220, 224–9
Copyright Law, China, revision
see intellectual property law revision, China, Copyright Law
Index

and criminal enforcement of IPR, China 347, 356–7
and criminal enforcement of IPR, Nordic countries 346, 351, 353–6
in digital single market, Europe 199–202, 206
orphan works see orphan works
State Administration of Copyright essay competition, China 195–6
territoriality obstacles, Europe 207
torrent file distribution network 353–6, 357
Universal Copyright Convention membership 45
Written Works Copyright Society (CWWCS) 219
copyright law and originality concept 91–106
copyright law and originality concept, China 99–104
creativity, meaning of 100–101, 106
definition of a work 99–100
dictionaries and tables, copying 104
independent creation 100
oil paintings derived from photographs 101–2, 106
originality, meaning of 100–101, 105, 106
Regulations on Protection of Computer Programs 103
copyright law and originality concept, Europe 93–9, 104–5
author’s own intellectual creation as harmonized concept 94–9, 104–5
‘author’s personal creation’ vs. ‘skill, labour, and judgement’ 93
database protection 98
harmonization through jurisprudence of CJEU 95–9, 105
as norm giver 104–5
photographic works 92, 97–8, 105, 106
sporting events 96–7
Correa, C. 170, 186
corruption opportunities, patent linkage 175, 178, 179, 180–81
Cotter, T. 273, 319, 333
counterfeiting 28, 202–3
Anti-Counterfeiting Trade Agreement 28
see also customs enforcement; infringements; reproductions
courts see judicial enforcement mechanisms in intellectual property law, China; legal cases under individual countries and EU; special intellectual property courts in China
Cox, A. 298
creativity, meaning of 100–101, 106
criminal enforcement of IPR 337–60
crimes in criminal law 344–8
criminalization ideology 341–2
government interference levels 342
infringement as crime 339–42
as last resort measure 342
specific crimes 345–8
technological development effects 340, 355, 357
criminal enforcement of IPR, China acts done with intent 346
complicity regulation 350
copyright violations 347, 356–7
crime and criminal liability definitions 343–4, 345
custodial sentences 352–3, 357, 358
intent of perpetrator, assessment of 349, 358
market economy focus 358
patent forging 347
patent infringements 346–7
penalties 352–3, 358
prosecution right 351
seriousness of circumstances requirement 347
trade secrets, and negligence assessment 349
trademark rights violation 346, 356
criminal enforcement of IPR, Nordic countries abettor liability 350, 355–6
complicity regulation 349–50, 354
copyright violations 346, 351, 353–6
crime and criminal liability  
definitions 343, 344  
criminal law reform 345, 358–9  
custodial sentences 352, 355, 356, 358  
damages levels 346  
day fine system (Norway) 351–2  
intent of perpetrator, assessment of 348–9, 358  
penalties 351–2, 358  
private rights protection 358  
prosecution right 350–51  
Trademarks Act and Patents Act violations 345–6, 348, 350–51  
criminal liability in trade secrets cases 309, 316  
Crowne, E. 182  
Cultural Revolution and lack of IP protection 23–4  
custodial sentences, criminal enforcement of IPR 352–3, 355, 356, 357, 358  
customs enforcement 361–76  
regulatory scope 364–6  
TRIPS Agreement 362–3  
see also counterfeiting  
customs enforcement, China  
detention upon application 371–2  
EU–China customs cooperation 373–5  
ex officio action 370, 371, 372  
recordation requirement 370  
Regulation on the Customs Protection of Intellectual Property 39, 45, 365–6  
small consignments of goods 372  
customs enforcement, Europe  
Border Measures Regulation (BMR) 362–3, 364–5, 366  
Border Measures Regulation (BMR), exclusions 365  
Community Customs Code 364–5, 366  
EU–China customs cooperation 209, 373–5  
imported goods 366–7  
large consignments of goods, simplified procedures 367–8  
small consignments of goods, simplified procedures 369–70  
Dai, Q. 324  
Daniel, A. 362  
Database Directive, Europe 94, 98, 105  
Davis, A. 294  
Davis, K. 11  
day fine system (Norway) 351–2  
De Pierredon-Fawcett, L. 126  
Dean, M. 14  
Deng, J. 322  
Denmark, Extended Collective Licensing (ECL) on orphan works 112–13  
dictionaries and tables, copying 104  
digitization rights, orphan works 114, 115–16, 117–19  
see also technology  
Dinwoodie, G. 6, 31–2, 144  
disputes  
FRAND disputes and standard essential patents (SEPs) see standard essential patents (SEPs) and FRAND disputes, China  
intellectual property law revision, China 85  
resolution through consultation meetings, non-practising entities (NPEs) in China 298  
dominant position abuse 241, 256  
Dong, B. 100  
double identity cases, trademark law reforms, Europe 151  
Drahos, P. 286  
Dreier, T. 153  
Dreyfuss, R. 6  
droit de suite  
China, legislation introduction 124–5, 134–7  
Europe see art law and resale rights, European origins of droit de suite  
drugs see under patent linkage in China  
‘dual track’ approach 304, 309, 322–3, 327–8  
Duffy, J. 31, 35  
education, intellectual property  
economic efficiency considerations 9–10  
education, intellectual property
knowledge in school textbooks, China 195–6
Eisenberg, R. 163, 166, 234
El Saibid, M. 164
Ellis, J. 291, 300
Elman, B. 21
employee invention rules 54, 58
enforcement
criminal enforcement of IPR see criminal enforcement of IPR
and management of licences, reducing costs of 216
patent enforcement, non-practising entities (NPEs) 295–300
patent linkage and aggressive enforcement 182–4
trademark law reforms, China 155–60
Engelbrekt, A. 15
equivalence doctrine in patent infringement cases 53
essential facility doctrine, standard essential patents (SEPs) 273–4
Europe, legal cases
Anheuser-Bush v. Budejovicky Budvar 155
BRT v. SABAM 241, 242
BSA 96
Class Intl BV v. Colgate Palmolive Co 152
Daft Punk 242–3
Football Association Premier League 92
Football Dataco 98
Re Gema 244
Huawei v. ZTE 250, 260, 264, 271, 274
Infopaq 92, 95, 96
Montex Holding Ltd v. Diesel SpA 152
Montres Rolex 151
Motorola – Enforcement of GPRS Standard Essential Patents 271, 274
Murphy 96–7
Painer 92, 97–8, 105, 106
Philips/Nokia agreement 152, 160–61
Polo/Lauren Company v. PT Dwidua Langgang PratamaIntl Freight Forwarders 151–2
Ralf Sieckmann v. Deutsches Patent- und Markenamt 144, 145
Samsung – Enforcement of UMTS standard essential patents 271
Europe, legislation
Border Measures Regulation (BMR) 365
Community Customs Code 364–5, 366
Community Design Regulation 306
Community Trademark Regulation 140, 141, 143–5, 148–9, 151, 196, 197, 207
Computer Directive 94, 105
Computer Programs Directive 206
Database Directive 94, 98, 105
Digital Library archives 109–10
EU–China Action Plan on customs cooperation 209
EU–China Joint Customs Cooperation Committee (JCCC) 373
EU–China Strategic Framework for Customs Cooperation 2014–2017 373–5
European Patent Convention (EPC) 332
European Telecommunications Standards Institute (ETSI) 260, 261, 268, 269, 271, 274, 275, 280, 281
Information Society Copyright Directive 73, 95–6, 97, 114
Office for Harmonization in the Internal Market (OHIM) 140, 141, 142, 143, 148, 161–2, 196, 197, 202
Resale Right Directive 120, 126–8, 129–30, 132
Telecommunications Standards Institute (ETSI) 260, 261, 268, 269, 271, 274, 275, 280, 281
Term Directive 94, 97
Trademark Directive 140, 151, 155, 196, 197
Trademark Regulation 306
Unified Patent Court (UPC) agreement 332–3, 336
see also individual countries
ex officio action, customs enforcement, China 370, 371, 372
exclusive licensing, collective rights management 238, 240, 241, 242, 245–6
see also licensing
extended collective licensing 224–7
see also licensing

fair use doctrine, intellectual property law revision, China 73–4
fair use exception to right of reproduction, orphan works 114
Favale, M. 113
Fen, X. 326
Feng, P. 20, 22, 23
Feng, X. 27
Film Copyright Association (CFCA), China 220

Finland
Act on the Use of Orphan Works 113
collective rights management and exclusive licences 246
Copyright Act 353–5
KKO 353–5, 356
first instance trials
judicial enforcement mechanisms, China 321, 322, 324, 325, 326, 327
special intellectual property courts, China 305, 308, 309, 311, 312, 315
first-to-file principle, trademark law reforms 145, 147, 149
Fischer-Lescano, A. 6
Flynn, S. 169, 171
‘follow the money’ approach, EU–China customs enforcement 374–5

France
Copyright Law, economic rights 72
copyright and moral rights 131
droit de suite legislation 125–6
Law on Digital Exploitation of Unavailable Books 111–12
FRAND disputes and statements for standard essential patents
see injunctions and FRAND statements for standard essential patents (SEPs); standard essential patents (SEPs) and FRAND disputes, China
Frånke, D. 343, 344, 348
free ride opportunities 32–3
freedom, creator’s 122–3, 240–43
Frischmann, B. 15
Frischtak, C. 30, 35
Fusco, S. 287
Fysh, M. 306
Gaber, M. 126
Gale, B. 23
Gallo, M. 129, 134
Galloway, J. 339
Gao, H. 29
Gao, X. 342
Gardner, J. 30
Garner, B. 60
Geiger, C. 7
Geller, P. 8, 32
geographical division, and judicial enforcement mechanisms 320
geographical indications (GI) 202, 204
Geradin, D. 252
Germany
collective rights management organizations (CMOs) 229, 230
Copyright Law 73–4, 112
copyright originality concept and Gestaltungshöhe (level of creativity) 93
cross-licensing 260
Huawei v. ZTE 250, 260, 264, 271, 274
Motorola v. Apple 259
Motorola v. Microsoft 259
‘Orange Book’ defence 259, 260, 262, 264
patent law and compulsory licence defence 258–9
Gervais, D. 39, 91, 224–5, 234
Gillespie, J. 164, 165, 185, 186, 187
Ginarte, J. 336
Ginsburg, T. 10–11
Goetzl, T. 129
Goldstein, P. 130
good faith principle, and trademarks 193
government implementation role 193–6, 204–5
government interference levels, and criminal enforcement 342
government-sponsored subsidization of private enterprise through anti-trade policy 301
Graddy, K. 128
graphical representation requirement, trademark law reforms 144–5
Gredel, D. 235
Greve, V. 350
Guan, Y. 18, 107–19
Guibault, L. 112
Guo, H. 28
Guo, Q. 217
Guo, S. 122
Haarmann, P. 143
Hansen, D. 107
Hanssman, H. 128
Harhoff, D. 332
harmonization
integrated internal market, call for, Europe 243
judicial enforcement mechanisms 332
and jurisprudence of CJEU 95–9, 105
and legal transplant 6–8, 30–31, 34
partial, and competition distortion, art law and resale rights 126, 127–8
trademark system, Europe 196–7, 206–7
Haun, K. 23
He, K. 91–106, 337–76
Helfer, L. 7
Heller, M. 234
Helmers, C. 234–5, 293
higher people’s court of each province, China 320, 321, 325, 326–7
Hilty, R. 337
Ho, C. 164
Hoen, E. 31
Hong Kong, digital copyright reform 33
Hongjian, W. 121
Hov, J. 350
Hsia, T. 23
Hu, A. 292
Hu, D. 330
Hu, S. 324
Hugenholtz, B. 7, 126, 130, 207, 266
Hungary, Orphan Works Directive 207–8
identical or similar marks, trademark law reforms 147, 156
Images Copyright Society (ICSC), China 219–20
‘independent’ intellectual property, China 27, 35–6, 38
‘Indigenous Innovation’ policies, China 290, 291, 300
indispensability test, collective rights management 241, 242–3
information
intellectual property knowledge in school textbooks, China 195–6
information society, and collective management 220, 226
infringements
and administrative penalties 58–9
boundary use, trademark law reforms, China 158–9
drug-patent issues 177
and government enforcement of IP law 195
patent infringements 53, 84–6, 197, 298, 321, 346–7
Trademark Law reform 85, 156, 158–9
see also counterfeiting; customs enforcement
injunctions and FRAND statements for standard essential patents (SEPs) 250–65
controversy over 251–2
industries facing rapid technological changes, effects on 252
market competition and industry development issues 250, 263
patent hold-up problem 251–2
product design alteration suggestion 251
royalty stacking issues 251–2
see also standard essential patents (SEPs) and FRAND disputes, China
injunctions and FRAND statements for standard essential patents (SEPs), Chinese law 253–8
anti-monopoly authorities 257–8
‘bad faith’ assertions 256, 263, 264
Civil Procedure Law 253
dominant position abuse 256
injunctive relief requirements 253–7
interlocutory injunctions 253
Ministry of Commerce (MOFCOM) and Microsoft/Nokia agreement 257–8
Patent Law 253, 254, 255
permanent injunction and cessation of infringement 253–5, 256–7, 264
standard implementation and royalty charges 255
injunctions and FRAND statements for standard essential patents (SEPs), Europe 258–62
and competition law 258–60, 261–2
German cross-licensing 260
German ‘Orange Book’ defence 259, 260, 262, 264
German patent law and compulsory licence defence 258–9
Motorola/Apple injunction 261–2
Netherlands and civil law 261, 264
Samsung/Apple injunction 262
injunctive relief availability, non-practising entities (NPEs) in China 296–7, 298–9
‘ink and wash’ paintings and authentication concerns 137
innovations, multi-component 295–6
institutional structure, legal transplant to governance transition 14–16
intellectual property law revision, China 65–88
authors’ moral and economic rights as personal and property rights 71
Berne Convention accession 69–70
fair use doctrine 73–4
intellectual property administrative system 85–6
international copyright norms adaptation into Chinese system 72, 74, 79, 82, 83, 87–8
Unfair Competition Law 75, 80, 82–3, 85
intellectual property law revision, China, Chinese Academy of Social Sciences (CASS draft)
author’s economic rights 72–3
computer software regulations 69, 70
fair use doctrine proposal 74
video recording protection 71
intellectual property law revision, China, Copyright Law amendment proposals 66–74, 75
copyright protection system 67–8
exceptions and limitations 73–4
infringements and disputes, dealing with 85
National Copyright Administration of China (NCAC) 66–7, 70, 71, 72, 73, 74
property (economic) right 72–3
punitive damages 81, 82, 84
repeal of Regulations for the Protection of Computer Software 69–70
video recordings 70–71
see also copyright
intellectual property law revision, China, Patent Law 75, 83–6
infringement investigating powers 84–6
patent application growth 85
punitive damages 81, 82, 84
and State Intellectual Property Office (SIPO) 84
see also patents
intellectual property law revision, China, Trademark Law 74–83
Index

infringements and disputes, dealing with 85
punitive damages 81–2, 84
registered trademarks, emphasizing use of 76–8
and State Administration of Industry and Commerce (SAIC) 75–6, 79, 80
trademark infringement and use of same or similar mark 80–81
trademarks, lack of commercial use effects 76–8
well-known trademark protection 78–80, 147, 193, 309–10
see also trademark law reforms
intellectual property regulation strategies and legal reforms 189–209
intellectual property regulation strategies and legal reforms, China appeal courts 193, 203, 306, 315
Copyright Act revision 193
counterfeit goods, dealing with 195, 203–4, 205–6
economic growth benefits 203, 209
enforcement measures against patent infringements 192
EU-China Action Plan on customs cooperation on IPR enforcement 209
geographical indication (GI) registrations 204
government implementation role 193–6, 204–5
infringements and government enforcement of IP law 195
intellectual property knowledge in school textbooks 195–6
international patent exhaustion principle, introduction of 192
local government involvement 194–5, 205
Madrid Protocol and Chinese companies abroad 204
Ministry of Industry and Information Technology guidelines 194
‘National Intellectual Property Strategy’ 189, 190–96
Patent Act revision 191, 203
patent applications 204
Patent Cooperation Treaty (PCT) involvement 204
patent exploitation cases 192
special stimulus measures 204–5
State Administration of Copyright essay competition 195–6
State Administration for Industry and Commerce (SAIC), counterfeiting cases 205
State Intellectual Property Office (SIPO) and granting of compulsory patent licences 192
State Intellectual Property Office (SIPO), IP protection help centres 195
State Intellectual Property Office (SIPO), ‘IPR Support the Development of Small and Micro Enterprises’ 204
trademark abuse prevention 193
Trademark Act revision 192–3, 203
trademark applications 204
trademarks and damages availability 193
trademarks and principle of good faith 193
trademarks and ‘well-known mark’ restrictions 193
intellectual property regulation strategies and legal reforms, Europe
‘A Single Market for Intellectual Property Rights...’ 189
author resale rights 201
Collective Management Directive 201, 207
Community Trademark Regulation 196, 197, 207
complementary enforcement and protection 202–3, 209
Computer Programs Directive 206
copyright in digital single market 199–202, 206
copyright law territoriality obstacles 207
counterfeiting and piracy 197, 202–3
disparity reduction 206–7, 209
EU-China Action Plan on customs cooperation on IPR enforcement 209
geographical indications for non-agricultural products, protection of 202
Licensing Europe and cross-border licensing 200–201
Memorandum of Understanding on out-of-print books 201
Office for Harmonization in the Internal Market (OHIM) 196, 197, 202
Orphan Works Directive 200–201, 207–8
patent applications and language issues 199
patent infringements, dealing with 197
patent system reform 197–9
patentability of computer-implemented inventions 206
text and data mining (TDM) access 200
trade secrets protection 202
Trademark Directive 196, 197
trademark system harmonization and unification 196–7, 206–7
unitary patent regulation 198–9, 206, 207–8
intent of perpetrator, assessment of, criminal enforcement of IPR 348–9, 358
intermediaries, rights intermediaries, collective rights management 234–5, 244, 245
intermediate courts 304, 305, 310–14
international Free Trade Agreements (FTAs) and patent protection 301–2
international patent exhaustion principle, introduction of 192
international standards
copyright norms adaptation into Chinese system 72, 74, 79, 82, 83, 87–8
and legal transplant 29–30, 33–4, 38, 52
international trends, and collective management 229–31
Internet effects 54, 116–17, 118–19, 156–7, 218
see also technology
Jaegar, T. 287–8
Japan
collective rights management organizations (CMOs) 230–31, 246
Intellectual Property High Court 306, 309
royalty rates 274–5
Samsung v. Apple 274–5
Jareborg, N. 341
Jefferson, G. 292
Jesien, K. 294
Jia, Y. 100
Jiang, F. 224
Jokela, A. 350
Judge, E. 91
judicial decision making and reform 17, 53–7
judicial enforcement mechanisms in intellectual property law, China 318–36
administrative protection 322–3, 325, 326, 327–8
basic people’s courts 320, 321, 325, 326, 334
Beijing, Shanghai and Guangzhou courts 325–7, 329, 330
case numbers 330
court supervision 320, 322
court system developments 319–23
dual enforcement system for IP protections 322–3, 327–8
elected judiciary/quota system for judges 329
EU comparison 331–4
first instance trials 321, 322, 324, 325, 326, 327
geographical division 320
harmonized enforcement system, importance of 332
higher people’s court of each province 320, 321, 325, 326–7
intermediate people’s courts 320, 321, 323, 325, 326
judicial system problems 328–9
judiciary 328–31
patent infringement cases on
innovation patents 321
protest cases 320, 321, 322
qualification criteria for judges 331
reform challenges 334, 335–6
remuneration of judges 328
shortage of judges 329, 330–31
Supreme People’s Court (SPC) 320,
321–2, 326, 333, 334
‘three-in-one’ model 323–5, 326, 333,
334
unitary patent package adoption
331
see also special intellectual property
courts in China

Kahn-Freund, O. 10, 31, 165, 177
karaoke entertainment enterprises
(KOEEs), collection of levies from
216, 221–4, 227
Kelley, A. 291
Kesan, J. 293
Kim, S. 26
Kitagawa, Z. 7
Komesar, N. 16
Kong, X. 56, 57
Koponen, P. 348–9
Kornhauser, L. 14
Koskinen, P. 343, 348
Koskinen-Olsson, T. 225
Kötz, H. 9
Kshetri, N. 44
Kur, A. 153

Lan, F. 227
Langsted, L. 343, 344
Lappi-Seppälä, T. 338, 341, 343
Larson, K. 287–302
Layne-Farrar, A. 276
Lee, E. 267
Lee, N. 1–2, 5–19, 232–49, 266–86
Lee-Makiyama, H. 301, 302
legal reforms see intellectual property
regulation strategies and legal
reforms
legal transplant, and norms of Chinese
society 43–64
administrative authorities’ role 53–9

Audio and Video Recordings
Governance 57
Berne Convention membership 45
collective rights management 233–4,
248–9
Confucianism influence 46–7, 48
Copyright Act enactment 50, 54,
55, 59
dissonance between IP law and IP
norms 59–61
employee invention rules 54, 58
equivalence doctrine in patent
infringement cases 53
foreign pressures to transplant IP
laws 45
General Principles of Civil Law
(1985) 50
infringements and administrative
penalties 58–9
and international standards 52
Invention Reward Statute (1963) 48
judicial decision making 53–7
local justice application conflicts
54–6
Luoyang zhigui idiom as praise for
literary work 47
motivation for IP transplants 44–6
National Intellectual Property
Strategy 61–2
national level and local level norms,
differences between 60
Paris Convention ratification 45, 52
Patent Act enactment 45, 49–50,
51–2, 55, 58, 59
patent applications (2012) 61, 62
patent licencing, compulsory 52
and patent linkage 185–8
Protection for Books and Journals
Regulation 57–8
Regulation on the Custom
Protection for Intellectual
Property 45
remuneration for authors or
translators based on a
calculation of the numbers of
words 57
reproductions and imitations and
Confucianism 47
resistance to adoption of IPRs
44–52
scientific and technological achievements as public goods (socialist ideology) 49, 50, 51
socialist ideology impact 47–9, 50, 51–2
state-owned entity or collective-owned entity and patent ownership 51, 52
Technology Improvement Statute (1963) 48
Trademark Act enactment 45, 50, 55, 59
trademark and domain name conflicts 54
trademark as well-known mark, power to rule on 54
transplanting through legislation 49–52
TRIPS Agreement 45
Universal Copyright Convention membership 45
US and China Memorandum of Understanding (1992) 45
US trade relations and Special 301 Priority Foreign Countries Report 45
World Intellectual Property Organization entry 45
legal transplant to governance transition 5–19
economic efficiency considerations 9–10
governance perspective 13–17, 18–19
harmonization and convergence problems 6–8
institutional structure 14–16
judicial reform considerations 17
legal transplant success measurement 12–13
legal transplant as theory 8–11
private participation 17
legal transplant and transformation of IP laws, China 20–42
adaptation effectiveness levels 38–9
benefits of legal transplants 32–5
Berne Convention for the Protection of Literary and Artistic Works accession 25
censorship concerns 25
complementary measures, need for 40
computer software regulations 25
Copyright Law, history of 22, 23, 25, 28
Cultural Revolution and lack of IP protection 23–4
Customs Regulations amendment 39
drawbacks of legal transplants 29–32
dynastic codes 21–2
Four Modernizations 24
free ride opportunities 32–3
future developments, need to address 35–6
găofēi (basic payment for writings and manuscripts) 23
Geneva Convention for the Protection of Producers of Phonograms ratification 25
harmonization benefits 34
harmonization restricting policy experimentation 30–31
history of legal transplant 21–9, 32
importation of problematic policies 31–2
‘independent’ intellectual property (zìzhū zhīshì chănquan) 27, 35–6, 38
innovation- and knowledge-based economy, increased focus on 26–7
and international standards 29–30, 33–4, 38
Law against Unfair Competition 25
Measures to Encourage Industrial Arts 22–3
middle-income trap, avoidance of 27
Patent Law, history of 21, 22, 24, 25, 26, 27–8
piracy and counterfeiting problems 28
Provisional Regulations Governing Invention and Patent Rights (1949) 23
Provisional Regulations on Trademark Registration (1949) 23
Republican era 22–3
sanctions, US threat of 25
State Intellectual Property Office
invention patents (2013),
intranational differences 36–7
trade secrets, concerns over
protection of 28
Trademark Law, history of 21–3,
24, 28
US Trade Representative (USTR)
Watch List 28–9
US/China Agreement on Trade
Relations (1979) 24
US/China Treaty for copyright,
patent and trademark
protection (1903) 22
WTO accession and millennium
amendments 26, 29
Legrand, P. 7
Lemley, M. 234, 251, 270, 297
Leonard, G. 335, 336
Levin, M. 339
Li, M. 17, 18, 65–88, 100, 303–17, 331
Li, Xiaowu 330
Li, Xibao 18, 292
Li, Yang 16–17, 232–49, 266–86
Li, Yufeng 47
Liang, M. 27
licensing
blanket licences, widespread
adoption of 215, 216
exclusive, collective rights
management 238, 240, 241, 242,
245–6
extended collective licensing 224–7
Licensing Europe 200–201
opportunities, non-practising entities
(NPEs) in China 290–91
platforms, collective rights
management 234
public cultural institutions and
digitization rights 115–16
standard essential patents (SEPs)
270–73
Liljeström, T. 248
Lim, K. 134
Lin, C. 179
Lin, L. 299
Lin, Z. 17, 18, 120–38
Liu, B. 163–88
Liu, C. 328, 333
Liu, D. 8, 13
Liu, F. 323
Liu, J. 291
Liu, K. 342
Liu, S. 55
Liu, W. 335, 336
local government involvement, China
194–5, 205
local justice application conflicts, legal
transplant 54–6
localization requirements, trademark
law reforms, China 161–2
location shopping concerns, art law
and resale rights 128
lodgment system proposal, orphan
works 116, 118–19
Lü, R. 52
Luginbuehl, S. 290, 297, 318, 323
Luhmann, N. 185
Lunney, G. 214
Luoyang zhigui idiom as praise for
literary work 47
McDonagh, L. 293
McDonough, J. 291
Machlup, F. 11
Madrid Protocol and Chinese
companies abroad 204
Magliocca, G. 234
‘manufacturing fiction’ doctrine,
trademark law reforms, Europe
152–3
market approval before patent expiry
173
market competition and industry
development issues 250, 263
market economy effects 228–9, 243–4,
247, 358
Maruyama, W. 24–5
Maskus, K. 31
Massey, J. 25
Mattei, U. 9–10, 318
maximalist protection, patent linkage
174–8
Mayergoyz, A. 235
Melander, S. 341
Merges, R. 15, 16, 234, 276
Messerlin, P. 301, 302
Meurer, M. 11–12
Mezei, P. 208
Microsoft/Nokia agreement 257–8
middle-income trap, avoidance of 27
Mihalceanu, C. 182
Miller, P. 16
monopoly concerns
anti-monopoly authorities 257–8
collective management organizations (CMOs) 215, 228–31, 238, 247–8
Monroig, M. 300–301
Montan, N. 47
Montgomery, L. 12, 17
Mossinghoff, G. 163
Motorola/Apple injunction 261–2
Mousourakis, G. 59–60
Mueller, J. 270
Music Copyright Society (MCSC), China 218, 219, 221–2, 224, 225–7, 235, 236–40
national intellectual property appeal court proposal 306, 315
national law and standard setting, standard essential patents (SEPs) 268–9, 272–4
Needham, J. 21
negligence assessment and trade secrets 349
Netherlands
civil law and standard essential patents (SEPs) 261, 264
Extended Collective Licensing (ECL) on orphan works 112
*Philips v. SK-Kassetten* 261
*Samsung v. Apple* 261
Neves, M. 185
Nguyen, X. 186
non-practising entities (NPEs) in China 287–302
collective rights management 234, 235
dispute resolution through consultation meetings 298
government incentives for filing patent applications 292
government-sponsored subsidization of private enterprise through anti-trade policy 301
high-technology sector focus 295–6
‘Indigenous Innovation’ policies 290, 291, 300
injunctive relief availability 296–7, 298–9
international Free Trade Agreements (FTAs) and patent protection 301–2
licensing opportunities 290–91
multi-component innovations 295–6
patent application numbers 291–2
patent enforcement culture 299–300
patent enforcement economics and risk factors 297–9
patent enforcement landscape and success of NPEs 295–7
patent exploitation requirement within three years of granting 296
patent infringement damages, calculation problems 298
patent litigation costs, prohibitive 294
*RuiChuang IPR Funds* 291, 300–302
success drivers 295–300
US comparison 287–9
utility model patents, use of 296
Nordic countries
criminal enforcement of IPR see criminal enforcement of IPR, Nordic countries
see also individual countries
Norway, day fine system 351–2
Nuoto, K. 345, 346
Oda, H. 7–8
Oddi, A. 12
OEM (Original Equipment Manufacturer) model, trademark law reforms 158, 161
Ohly, A. 7
Oker-Blom, M. 139–62
Okumura, K. 231
Olsson, H. 339, 342, 345
‘Orange Book’ defence, Germany 259, 260, 262, 264
O’Reilly, J. 181
originality concept, and copyright law see copyright law and originality concept
Orlowski, A. 111
orphan works 107–19
Denmark, Extended Collective Licensing (ECL) on orphan works 112–13
EU Orphan Works Directive 108–10
EU Orphan Works Directive, transposition into national law 110–13
European Digital Library archives 109–10
Finland, Act on the Use of Orphan Works 113
France, Law on Digital Exploitation of Unavailable Books 111–12
Germany, Copyright Law and digitization of orphan works 112
Netherlands, Extended Collective Licensing (ECL) on orphan works 112
Orphan Works Directive, EU 200–201, 207–8
UK Enterprise and Regulatory Reform Act 2013 (ERRA) licensing scheme 110–11
orphan works, Chinese approach 113–18
commercial information service providers 116, 117–18
fair use exception to right of reproduction 114
Internet industries, influence of 116–17, 118–19
lodgment system proposal 116, 118–19
National Copyright Administration (NCAC) Draft 107, 113, 114, 115, 116, 118–19
public cultural institutions, Copyright Law exemptions 114–15
public cultural institutions and digitization rights 114, 117–19
public cultural institutions and digitization rights, and compulsory licensing 115–16
Regulation on the Implementation of the Copyright Law (CRIC 2013) 113, 114
Outterson, K. 169
own-name defence, trademark law reforms 155
paintings derived from photographs 101–2, 106
see also photographic works
Paris Convention 45, 52, 78, 82, 83, 204, 310, 333
see also Berne Convention; TRIPS Agreement
Park, W. 336
patent linkage in China 163–88
adverse drug incidents 179–80, 181
agency constraints 178–82
aggressive enforcement 182–4
Bolar exemption 173, 175–6
capacity problems 179–80
China Food and Drug Administration (CFDA), Provisions for Drug Registration revision 173
coordination requirements 181–2, 186–7
corruption opportunities 175, 178, 179, 180–81
drug-patent infringement issues 177
drug-patent registration incompetence 180, 182
generic drug applications 166, 167, 168, 169, 170, 171, 172, 173, 174–5, 186
generic drugs, research and development (Bolar exemption) 173, 175–6
gradual transfer suggestion and flexible enforcement rule 187–8
legal transfer theories, lessons for 185–8
market approval before patent expiry 173
maximalist protection 174–8
new drug application (NDA) approval 166, 167–8, 175, 176
origins 165–73
patent dispute measures 172
patent law transplantation success 164–5
patent linkage with strong administrative discretion 176–8
PhRMA Submission on patent infringement suits 178
pre-approval conduct amendment 173
reference-less linkage system issues 175
regulatory patent linkage 171–3
State Food and Drug Administration (SFDA) 171–2, 173, 175, 176, 177, 178–80, 181, 183, 184, 186
State Intellectual Property Office (SIPO) input 175, 182, 183
system theory 185
US free trade agreements and patent linkage requirement 164, 168–71, 174
Viagra patent dispute 183–4
Welman Pharmaceuticals abuse case 184
patents
applications 61, 62, 85, 199, 204, 291–2
computer-implemented inventions 206
drug-patents 177, 180, 182
enforcement culture 295–300
exploitation requirement within three years of granting 296
forging 347
government incentives for filing applications 292
hold-up problem 251–2
infringement cases 53, 84–6, 197, 298, 321, 346–7
international patent exhaustion principle, introduction of 192
licensing, compulsory 52
litigation costs, prohibitive 294
Patent Act, China 45, 49–50, 51–2, 55, 58, 59
Patent Act revision, China 191, 203
Patent Law, China 21, 22, 24, 25, 26, 27–8, 253, 254, 255
Patent Law revision see intellectual property law revision, China, Patent Law
Patent Review Board, China 311
patent trolls, negative impact 235
Patents Act violations, Nordic countries 345–6, 348, 350–51
private patent pools 234
protection, and international Free Trade Agreements (FTAs) 301–2
Provisional Regulations Governing Invention and Patent Rights (1949), China 23
standard essential patents (SEPs) see injunctions and FRAND statements for standard essential patents (SEPs); standard essential patents (SEPs) and FRAND disputes, China and State Intellectual Property Office (SIPO) China 36–7, 192
state-owned entity and patent ownership 51, 52
system reform, Europe 197–9
unitary patent package adoption, China 331
unitary patent regulation, Europe 198–9, 206, 207–8
utility model and design patents 296, 305
Patlock, T. 297
penalties
administrative 58–9
criminal enforcement of IPR 351–3, 358
punitive damages 81–2, 84
Pendleton, M. 21, 23
Penrose, E. 11
Perlmutter, S. 228
Peukert, A. 12, 13
Pfeffer, J. 125
pharmaceuticals see under patent linkage in China
Philipp, J. 301
photographic works 92, 97–8, 101–2, 105, 106, 123
PhRMA Submission on patent infringement suits 178
Pila, J. 7
piracy, customs enforcement see customs enforcement
Plant Variety Review Board cases, China 311
Potter, P. 21
private patent pools 234
private rights protection 358
product design alteration suggestion, standard essential patents (SEPs) 251
proportionality principle application, standard essential patents (SEPs) 276–9, 282–4
protest cases 320, 321, 322
Prud’homme, D. 299
public cultural institutions and digitization rights, orphan works 114–16, 117–19
punitive damages 81–2, 84 see also penalties
Qiao, C. 100
Rahmatian, A. 13
Rai, A. 15, 232
recordation requirement, customs enforcement, China 370
Reddy, M. 125
reforms and revision of intellectual property regulation see intellectual property law revision, China; intellectual property regulation strategies and legal reforms
registered trademarks, emphasizing use of 76–8
registration process, trademark law reforms, China 145–8, 149
Reichman, J. 15
Reinbothe, J. 220, 230
remuneration
for authors or translators based on a calculation of numbers of words 57
gāofei (basic payment for writings and manuscripts) 23
judges 328
Ren, Ž. 227
reproductions 47, 114 see also counterfeiting
resale rights see art law and resale rights
revenue distribution
collective rights management, China 243–4, 247
royalties see royalties
revocation of trademark not in use continuously for three years, China 149–50, 159–60
Richards, W. 140
Riesenhuber, K. 7
Riis, T. 248
Risch, M. 293
risks
and patent enforcement economics 297–9
risk sharing benefits and resale rights 129
Roff, P. 301
Roffe, P. 170
Rosati, E. 91
Rose, N. 16
Rosenmeier, M. 340, 342, 346, 352
Ross, A. 10
royalties
anti-royalty stacking as policy consideration 278–9, 283
calculations 271, 274, 279–80
Royalty Free (RF) principle 270, 273
stacking issues 251–2
see also revenue distribution
RuiChuang IPR Funds, China 291, 300–302
Ruskola, T. 10
Samsung/Apple injunction 262
Samuelson, P. 5, 267
sanctions, US threat of 25
Sanjuan, J. 170
Santilli, M. 128
Schneider, I. 15
Schneider, M. 362, 369
Schovsbo, J. 248, 340, 342, 346, 352
Schwartz, D. 293
Seidman, A. and R. 9, 10
self-regulation, standard-setting organizations (SSOs) 267, 270, 286
Sell, S. 185–6, 292
Sepetys, K. 298
Governance of intellectual property rights in China and Europe

SEPs see standard essential payments
seriousness of circumstances
requirement, criminal enforcement
of IPR, China 347
Seuba, X. 165, 170, 171
Shan, H. 295
Shan, X. 61, 322
Shao, W. 320, 323
Shapiro, C. 251, 285, 297
Sherman, B. 6
Slaughter, A. 267
Smith, H. 15
socialist ideology impact 47–9, 50, 51–2
software see computer software
Solow, J. 129
Song, S. 100
special intellectual property courts in
China 303–17
civil and administrative cases 309
computer programs, argument for
inclusion of 309, 311, 312
criminal liability in trade secrets
cases 309, 316
Decision to Establish Intellectual
Property Courts 307–8
‘dual track’ approach 304, 309
first instance cases concerning plant
varieties and layout-designs 305, 308, 309, 311, 312, 315
future direction 314–16
as intermediate courts 304, 305, 310–14
jurisdiction of intellectual property
courts 308–10
location of future courts 314
national intellectual property appeal
court proposal 306, 315
National Intellectual Property
Strategy 306, 307, 316
Patent Review Board cases 311
Plant Variety Review Board cases
311
special intellectual property tribunals
303–6
three-in-one or two-in-one
competence question 315–16
trade secrets and technical secrets,
argument for inclusion of
308–9, 311, 312, 316
Trademark Review Board cases 311
trans-regional jurisdiction 311–14
utility model patents and design
patents, dispute resolution 305
well-known trademarks,
identification of 309–10
see also judicial enforcement
mechanisms in intellectual
property law, China
special stimulus measures 204–5
sporting events, copyright law 96–7
standard essential patents (SEPs) and
FRAND disputes, China 266–86
Administration for Industry and
Commerce and regulatory
provision against IP abuse
273–4
essential facility doctrine 273–4
failure to disclose SEP related to
national standards 272–3
Huawei v. IDC ruling 255–6, 274,
275–6, 278–82
importation of doctrinal tools for
complex cases 267, 272
Laws Applicable to Foreign-Related
Civil Relations 281–2
licensing, compulsory regime 272–3
licensing principle commitment
270–71
licensing principle disputes 271–2
national law and standard setting
268–9, 272–4
non-national standards 273
Royalty Free (RF) principle 270, 273
royalty rates 271
Standardization Administration of
China (SAC) 269
telecommunications standards and
patent policies 268–74
territoriality of patent rights 267
see also injunctions and FRAND
statements for standard
essential patents (SEPs)
standard essential patents (SEPs) and
FRAND disputes, local rights
and European standard-setting
organizations (SSOs) 274–84
anti-patent hold-up as policy
consideration 277–8, 283
anti-royalty stacking as policy
consideration 278–9, 283
dispute jurisdiction 280–82
European Telecommunications Standards Institute (ETSI) 260, 261, 268, 269, 271, 274, 275, 280, 281
FRAND terms, defining 282
proportionality principle application 276–9, 282–4
royalty calculations 274, 279–80
total quantity control as policy consideration 277
state-owned entity and patent ownership 51, 52
Stiroh, L. 335, 336
Stoianoff, N. 43, 361, 363
Sun, Y. 296
Suttmeier, R. 63, 292
Sweden, Pirate Bay case 355–6

tables and dictionaries, copying 104
Taiwan, Intellectual Property High Court 306
Tammenlehto, L. 337–60
Tamura, Y. 15, 232
Tang, Z. 51
Tapani, J. 343, 344
Tatham, D. 140
taxation, artists’ tax paying and record keeping, China 135–6
technology computers 25, 69, 70, 206, 309, 311, 312
copyright in digital single market, Europe 199–202, 206
digitization rights, orphan works 114, 115–16, 117–19
high-technology sector focus 295–6
Internet effects 54, 116–17, 118–19, 156–7, 218
Regulations for the Protection of Computer Software 69–70, 103
scientific and technological achievements as public goods (socialist ideology) 49, 50, 51
technical secrets, argument for inclusion in special intellectual property courts 308–9, 311, 312, 316
technological change effects 234, 243, 252, 340, 355, 357
Technology Improvement Statute (1963), China 48
telecommunication standards China 268–74
European Telecommunications Standards Institute (ETSI) 260, 261, 268, 269, 271, 274, 275, 280, 281
Temple, R. 21
territoriality patent rights, China 267
trademark law reforms, Europe 148–9
Terroir, P. 300–301
Teubner, G. 6, 9, 63, 185
text and data mining (TDM) access 200
‘three-in-one’ model, China 315–16, 323–5, 326, 333, 334
Tian, H. 341
Tolvanen, M. 339, 341, 343, 344
Törnudd, P. 341
Torti, V. 277
trade secrets argument for inclusion in special intellectual property courts 308–9, 311, 312, 316
and negligence assessment 349
protection 28, 202
trademark law reforms 139–62
trademark enforcement and use of mark 151–60
trademark use in acquisition of trademark rights 143–8
trademark use and trademark maintenance 148–50
trademark law reforms, China Apple iPad trademark infringement case 145–6
cross-border issues and trademark infringements 158
enforcement 155–60
exclusions of identical or similar marks 147, 156
first-to-file principle 145, 147, 149
infringement cases, boundary use 158–9
infringement cases and exemption from damages as defence in civil proceedings 159–60
infringement exemptions 156
localization requirements 161–2
OEM (Original Equipment Manufacturer) model 158, 161
opposition procedure prior to registration 147–8
registration 145–8
registration process and marks in prior use 146–7, 149
revocation of trademark not in use continuously for three years 149–50, 159–60
search engine keywords and trademark infringement 156–7
Trademark Act 145, 146–8, 149–50, 155–6, 159
trademark ambush problems 145–6
Trademark Law history 139–40, 142
trademark protection scope 155–8
trademark use in online environment, challenge of 156–7
trademark use and trademark maintenance 149–50
trademarks and domain names, conflict between 157
‘use of trademarks’ definition 146
well-known mark privilege despite non-registration 147
trademark law reforms, Europe
Community Trade Mark Regulation (CTMR) 140, 141, 143–5, 148–9, 151
counterfeit cases and goods-in-transit issue 151–4, 160–61
Directive Compromise Text 141, 143, 145
double identity cases 151
graphical representation requirement 144–5
grounds of refusal ex officio 145
‘in the course of trade’ and goods-in-transit issue 151–4, 160–61
limitations on actions taken by third parties 154–5
‘manufacturing fiction’ doctrine 152–3
Office for Harmonization in the Internal Market (OHIM) 140, 141, 142, 143, 148, 161–2
own-name defence 155
Proposed New Directive 153
Proposed New Regulation 153
Regulation Compromise Text 141, 144, 145, 154
territorial extent of use, need for clarification on 148–9
Trade Mark Directive (TMD) 140, 151, 155
Trademark Law history 140–41
trademark use and protection requirements 143–5
trademark use and scope of protection 151–5
trademark use and trademark maintenance 148–9
trademarks
abuse prevention 193
ambush problems 145–6
applications 204
and damages availability 193
and domain name conflicts 54
infringement and use of same or similar mark 80–81
and principle of good faith 193
Provisional Regulations on
Trademark Registration (1949), China 23
registration process 145–8, 149
revocation of trademark not in use continuously for three years, China 149–50, 159–60
rights violation 346, 356
system harmonization and unification, Europe 196–7, 206–7
Trademark Act, China 45, 50, 55, 59
Trademark Act, China, revision 192–3, 203
Trademark Directive, Europe 196, 197
Trademark Law revision see intellectual property law revision, China, Trademark Law
Trademark Review Board cases, China 311
trademark as well-known mark, power to rule on 54
Trademarks Act violations, Nordic
Index

399

countries 345–6, 348, 350–51
well-known trademark protection 78–80, 147, 193, 309–10
Trans-Pacific Partnership Agreement 28
trans-regional jurisdiction, China 311–14
transaction costs 128, 129, 216–17
Trebilcock, M. 11
TRIPS Agreement
computer programs protected as literary works 69
copyright on performances, sound recordings and broadcasts 70
customs enforcement 362–3
elimination of barriers to international trade 153
identical trademarks and likelihood of confusion 81
IP system of enforcement 333
legal transplant, and norms of Chinese society 45
patent linkage requirements 164, 170
technical and financial cooperation requirements (Article 67) 33
‘three-step test’ 74
trade secrets, misappropriation of 82
unfair competition 82, 83
well-known trademark protection 78, 310
see also Berne Convention; Paris Convention
Tu, W. 47
Tuori, R. 351

UK
art resale rights 127, 128
copyright originality concept 93
Enterprise and Regulatory Reform Act 2013 (ERRA) licensing scheme 110–11
Ladbroke (Football) Ltd v. William Hill (Football) 93
Macmillan & Co Ltd v. Cooper 93
Nokia v. IPCom 299
Patent County Court 305–6
Performing Rights Society for Music (PRS) 245–6
University of London Press v. University Tutorial Press 93
Ullrich, H. 17, 266
Unfair Competition Law, China 75, 80, 82–3, 85
see also competition
unitary patent package adoption, China 331
unitary patent regulation, Europe 198–9, 206, 207–8
Universal Copyright Convention membership 45
US
Copyright Law 72, 73, 114
Court of Appeals for the Federal Circuit 305
drug patents and Orange Book 167
free trade agreements and patent linkage requirement 164, 168–71, 174
generic drug scandal 180–81
Innovation Act 289
Lanham Act and unfair competition 82
Leahy-Smith America Invents Act 288–9
non-practising entities (NPEs) 287–9
Orphan Work Act 107, 110
patent law and punitive damages 81
patent litigation costs, prohibitive 294
patent trolls, negative impact 235
royalty rates 274
sanctions, US threat of 25
standard-setting organizations (SSOs) patent policy 270–71, 274, 277–8, 281, 282–3
Tariff Act 340
trade relations and Special 301 Priority Foreign Countries Report 45
Trade Representative (USTR) Watch List 28–9
US and China Memorandum of Understanding (1992) 45
US/China Agreement on Trade Relations (1979) 24
US/China Treaty for copyright,
patent and trademark protection (1903) 22
US, legal cases
Abbott Labs. v. Young 166
BMI v. CBS 216
In re Dell 271
eBay v. MercExchange 289, 299
Georgia-Pacific Corp. v. United States Plywood Corp 282–4
In re Innovatio IP Ventures 283
Janssen Pharmaceutica v. Apotex 166
Kelly v. Arriba Soft Corp. 73
KSR Int’l Co. v. Teleflex 289
MedImmune v. Genentech 289
Microsoft v. Motorola 274, 277–8, 281, 282–4
utility model patents 296, 305

Van Gerven, W. 6
Van Overwalle, G. 235
Vaver, D. 132
Viagra patent dispute 183–4
video recordings see audio and video recordings
Von Lewinski, S. 91, 94, 95
Von Savigny, F. 9
Vrins, O. 362, 369

Walter, M. 94, 95
Wan, X. 63
Wang, F. 21
Wang, L. 328
Wang, Q. 100
Wang, Y. 48, 51
Watson, A. 9, 32, 37, 42, 289–90
Wechsler, A. 13
Wei, S. 11, 363
Wei, X. 205
well-known trademark protection
78–80, 147, 193, 309–10
Welman Pharmaceuticals abuse case 184
Wen, J. 18
WIPO 45, 69, 74
Woo, M. 56

Written Works Copyright Society (CWWCS) 219
WTO
accession 13, 26, 29, 218, 220
China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights 39
GATT, elimination of barriers to international trade 153–4

Wu, Handong 27, 46, 47, 333–4
Wu, Hui 195
Wu, W. 12, 213–31
Wu, Zhixiao 326
Wu, Zuoren 122
Wuenschel, J. 132, 133
Xiao, X. 195
Xu, Chao 100
Xu, Chunming 61

Yang, Dali 186
Yang, Deli 290
Yang, W. 117
Yang, Y. 296
Yao, X. 63, 292
Ye, R. 256, 276
Yeh, K. 290
Yu, P. 6, 8, 11, 12–13, 20–42, 120, 183, 188, 228, 301
Yu, Y. 181
Yuan, D. 325, 330, 334

Zhan, Y. 291, 292–3
Zhang, H. 292, 297, 299
Zhang, L. 5, 17, 18, 43–64, 120, 139–62, 189–209
Zhang, W. 273
Zhao, Q. 250–65
Zhao, Yajie 318–36
Zhao, Yuanguo 48, 50, 58
Zheng, C. 21, 23
Zheng, Y. 329
Zhou, Q. 329
Zhou, Z. 324
Zweigert, K. 9