

# Contents

---

<i>List of contributors</i>	x
<i>Preface</i>	xi
1 User generated law: re-constructing intellectual property law in a knowledge society	1
<i>Thomas Riis</i>	
1 Introduction	1
2 Private regulatory models and the fragmentation of law	3
3 User innovation	5
3.1 Heterogeneous demands	6
3.2 Expectation of benefits (profits)	6
3.3 Asymmetric information	7
3.4 The role of lead users	7
4 User generated law	8
4.1 Autonomy spaces	10
5 Phase 1: emergence	12
5.1 Heterogeneous demands	12
5.2 Expectation of benefits	14
5.3 Asymmetric information	18
5.4 The role of lead users	21
6 Phase 2: diffusion	22
7 Phase 3: adoption	24
8 The international dimension	25
9 Prospects for a model on user generated law	26
2 Information abundance and knowledge commons	28
<i>Michael J. Madison</i>	
1 Introduction	28
2 Knowledge commons governance	33
3 An illustration: law itself as knowledge commons	35
4 A research framework for understanding knowledge commons governance	41

5	The knowledge commons research framework applied	46
5.1	Galaxy Zoo	46
5.2	Best practices projects	49
6	Conclusion	53
3	Collective agreements for the clearance of copyrights – the case of collective management and extended collective licences	55
	<i>Thomas Riis, Ole-Andreas Rognstad and Jens Schovsbo</i>	
1	Collective agreements	55
2	The emergence of CMOs	56
3	The extension effect (extended collective licences)	58
4	Emergence	59
4.1	The first ECLs	59
4.2	Heterogeneous demands	62
4.3	Expectation of benefits	64
4.4	Asymmetric information	65
4.5	The role of lead users	67
5	Dissemination	67
5.1	Dissemination to other jurisdictions	69
5.2	Dissemination to other forms of uses	70
6	Adoption	71
7	Perspectives and implications	72
8	Conclusion	75
4	Emerging models for cross-border online licensing	77
	<i>Sebastian Felix Schwemer</i>	
1	Introduction	77
2	Emerging licensing models – stocktaking and outlook	79
2.1	Model contracts as user generated law – competition concerns and soft law	79
2.2	Emergence of multi-territorial mono-repertoire direct licensing	83
2.3	Licensing hubs formed by author CMOs	85
2.4	Towards new players and (even more) direct licensing?	86
2.5	The operational picture	88
3	Assessment: the online music-licensing ecosystem as an example of user generated law	89
3.1	Autonomy spaces and interdependencies between the licensing models	89
3.2	The emergence of cross-border models	91

3.3	Diffusion phase	96
3.4	Adoption phase	96
4	Concluding remarks	97
5	Open source licences	99
	<i>Henrik Udsen</i>	
1	The legal protection of computer programs	99
2	Open source licences	101
2.1	History and philosophy of open source licences	101
2.2	Copyleft	105
2.3	Open source licences and the practical use of open source software	106
2.4	The interplay between open source licences and copyright legislation	107
2.5	The legal status of open source licences – contractual relationship?	108
3	Open source licences and the user generated law model	109
3.1	Emergence	109
3.2	Diffusion	112
3.3	Adoption	113
4	Concluding remarks	113
6	IP coordination models: revealing some of the ‘magic’ behind patent pools and clearinghouses?	115
	<i>Esther van Zimmeren</i>	
1	Introduction	115
2	‘Ex ante’ questions	120
3	Main features of the user generated law model	126
3.1	Emergence	127
3.2	Diffusion	132
3.3	Adoption	133
4	Patent pools	133
5	Clearinghouses	137
6	Comparative analysis	142
7	Concluding remarks	145
7	More competition-law-FRANDly IPR policies: a solution to SSOs’ problems of self-governance?	148
	<i>Olga Kokoulina and Timo Minssen</i>	
1	Introduction	148
2	The standard setting landscape in the ICT sector	150
2.1	New research perspectives on standardization	150

2.2	Standards and standardization in the ICT sector	152
2.3	Nature and challenges of standard setting organizations	156
3	IPR and standards	159
3.1	Overview of the role of IPRs in the ICT sector	159
3.2	IPR policy of SSOs as a matter of commons governance	162
3.3	Patent disclosure policy and licensing commitments	165
4	Overview of Competition Law Practice	168
4.1	Competition law's treatment of SSO activity as horizontal cooperation	168
4.2	Competition law's treatment of patent holdups through a breach of FRAND commitments	172
5	Discussion	175
6	Conclusions	179
8	'The rise of standardisation and the limits of self-governance': unilateral conduct under international standards from an EU competition law perspective <i>Björn Lundqvist</i>	180
1	Introduction	180
2	The <i>Orange-Book-Standard</i> case and beyond	182
3	The EU Commission's investigations	186
4	The opinion of the Advocate General in <i>Huawei</i>	191
5	The ECJ's judgment in <i>Huawei</i>	197
6	Analysis	202
7	User generated law model	203
8	Conclusion	204
9	The private legal governance of domain names <i>Jens Schovsbo</i>	206
1	Introduction	206
2	The institutional framework for dispute resolution of domain names	209
2.1	The UDRP system	209
2.2	Denmark (.dk)	213
2.3	Perspectives and implications	216
3	Substantive law conflicts: use of trademark in a domain name to express criticism	217
3.1	Introduction	217
3.2	UDRP	219

3.3	Denmark	222
3.4	Perspectives and implications	224
4	Reflection: domain names and user generated law	225
10	Private enforcement of IP law by internet service providers: notice and action procedures	228
	<i>Clement Salung Petersen and Thomas Riis</i>	
1	Introduction	228
2	Emergence of N&A Procedures	229
2.1	The autonomy spaces: standards of liability for ISPs	229
2.2	Heterogeneous demands	232
2.3	Expectation of benefits	233
2.4	Asymmetric information	234
2.5	Lead user	235
2.6	Conclusion	236
3	Diffusion	236
4	Adoption	239
4.1	Significance of N&A procedures	239
4.2	Problems related to N&A procedures	241
4.3	Adoption: legislative correction of autonomy spaces?	247
5	Concluding remarks	250
	<i>Bibliography</i>	252
	<i>Index</i>	271