Index

accessibility
database, EU copyright law 72
online, digital cultural heritage
assets and orphan works 366, 369, 389
website (based on server
elsewhere), EU private
international law 563–4
acquis communautaire 61
and ‘Europeanification’ of moral
rights 205, 214–15, 216, 218,
226
adaptation, right of,
‘Europeanification’ of moral
rights 217
Adeney, E. 201, 228
Akester, P. 210
Al-Badri, N. 388
Albanian copyright law and
compliance with EU legislation
493–511
2016 Law and National Intellectual
and Industrial Property
Albanian Office for Copyright,
establishment of 506
author definition 507–8
Civil Code (1982) 500, 501
copyright regulation 499, 508
computer programs 503
copyright duration and economic
benefits 496–7
copyright post-1990 500–510
copyright protection 496
copyright tradition and history
493–500
Directorate of Copyright 508–9
dispute resolution 509, 510
economic rights, preservation of
503, 505
equal protection principle 499, 503
exceptions 498–9
infringement compensation 497
and international agreements 503,
504
National Council for Copyright 508
non-transferable non-economic
rights 505, 508
owner’s prerogative to exclude
other persons from enjoying
his work 501
post-war reform (1945) 494
property and non-property ‘moral’
rights 496
protection of copyright to the
person who had published his
work in a foreign country 498
protection of non-property (moral)
rights 498–9, 502
scientific institutions recognized as
‘authors’ of works 499
scientific research 509–10
socialist reform (1947–1982) 494–9
Stabilization and Association
Agreement with EU 504–6
State influence and intervention
497, 499
territoriality principle 496
transfer of economic rights 502–3,
508
Alexander, I. 31
Alford, W. 544
Alivizatou, M. 465
Amer, K. 417
Amescua, C. 485
Andean Law, search engines and
works reproduced and published
online 412–14
Anderson, J. 482
Antons, C. 541
Apel, S. 274, 276, 277, 281
Aplin, T. 92, 183, 188, 191
Arantes, A. 476, 477
archives, existing collections held by 482
see also contemporary intangible cultural heritage
Arezzo, E. 183
Arizpe, L. 485
artistic works
reproductions depicting sacred aboriginal knowledge 481
transformation provides benefit to society, search engines, works reproduced and published online by 396–8, 400–402, 415
artists
associations, collective societies v. artists’ associations, Canada 16–18
Vietnam copyright 520–21
see also performance rights
attribution rights
‘Europeanification’ of moral rights, invitation for 215, 219, 226
online, problems with, European Court of Justice (CJEU) and right of communication to the public 210–11
right to prevent false attribution, Vietnam 550
auctions, public, compulsory collective management and author’s resale right, Belgium 238–40, 243, 244
audiovisual services and geo-blocking 311
see also online and streaming services, EU
Austin, G. 178, 199, 284
Australia
Cooper 173–4
electronic communication 173–4
extended collective licenses 430
iiNet 173
misappropriation of indigenous people’s knowledge 481
National Rugby League Investments v. Singtel Optus 173
Optus 173
Payunka, Marika v. Indofurn 481
Telstra Corp. v. Austrailasian Performing Rights Ass’n 173
WIPO Copyright Treaty, right of making available 172–4
authors
authorship principle and collected works, universities and public research organizations, Spain 345–6
co-authorship regulation, Albania 499, 508
colleced works, and authorship principle, universities and public research organizations, Spain 345–6
definition, Albanian copyright law 507–8
digitalization of books without prior authorization of 400–407
droit d’auteur and moral rights, Vietnam 540, 546–54
exclusive rights, and search engines, works reproduced and published online by 405–6
personality and personal touch, and EU copyright law 70, 73–4, 75, 83
and publishers, relationship between 46–7
remuneration see remuneration of authors and performers in copyright contract law
resale right and compulsory collective management see compulsory collective management and author’s resale right
work published without consent of author, European Court of Justice (CJEU) and right of communication to the public 108, 110
see also books; publishing
Axhamn, J. 421, 422, 423
Index 577

Banks, C. 201
Bannerman, S. 43
Beazley, O. 471
Belgium, compulsory collective management see compulsory collective management and author’s resale right, EU, Belgium
benefit to society, artistic work 396–8, 400–402, 415
Bently, L. 31, 92, 94, 484, 548
Bercovitz, R. 348, 354–5, 357
Berne Convention
Berlin Revision 48
Canada, copyright balancing act 10–11, 20
collective management and exclusive rights 438, 441
compulsory collective management and author’s resale right, EU 234
computer programs 76, 80
contemporary intangible cultural heritage 481–3
digital cultural heritage assets and orphan works 385
and EU private international law 556–7, 561
and European morality/public policy exclusion 447–8
performance of works 100, 109
rights of communication to the public 120–32
successive communications, proposals for interpretation, European Court of Justice (CJEU) and right of communication to the public 120–32
transplantation of copyright law and Vietnam’s experience 548–9
Vietnam copyright infringement 518 and WIPO Copyright Treaty, right of making available 135, 137–8
best-seller clause, remuneration of authors and performers 262–4
Bhattacharya, A. 479
Binctin, N. 211, 228
Birhack, M. 541, 548
Blake, J. 463, 464, 469, 470, 471, 475, 478
Blom, A. 398
Bloom, H. 57
Bohan, F. 391, 393
Bolla, P. 125, 127
Bond, C. 48
books
copyright concept within book history and print culture 33–4
factual character of original book, works reproduced and published online by 403
and snippet views, works reproduced and published online by 400–407
see also authors; publishing
Bouchard, M. 383
Boyle, J. 365
Braegelmann, T. 274, 275
Brauneis, R. 49
Brenner, D. 167
Breyer, S. 49
Bridgeman Art Library and orphan works 367
bright-line rule for music sampling 275, 282
see also musical creativity and sampling of sound recordings
Brinkhof, J. 569
Brisenden, S. 474
Brison, F. 96–134
broadcasting
cable retransmission see cable retransmission, EU
encrypted, EU 101
neighbouring right, EU 117
protection by related rights of performances, phonograms and broadcasts 448–9
radio see radio
and rebroadcasting of works and performances, EU 87–8, 89–94, 95
satellite see satellite broadcasting, EU
territorial exclusivity of TV broadcasters, EU 303–6
uplink stations 188
see also performances; recording
Brown, M. 471, 476, 477, 480–81
Brussels Regulation Recast 194–6
see also EU right of communication to the public in cases of ubiquitous infringement
Bùi Trọng Hiền 545
Bulayenko, O. 378, 382
Bunker, M. 395
Burnstein, M. 178, 198
Buydens, M. 200
Cabay, J. 229
cable retransmission, EU 98, 106, 111, 114, 125, 128, 129–30
Satellite and Cable Directive (93/83) 97, 112, 114, 143, 145, 184, 185, 186, 188, 420, 424
see also broadcasting
caching process 393
see also search engines, works reproduced and published online by
Calvert, C. 395
Cámara Águila, P. 343–58
Cameron, A. 321
Canada
Competition Act 23
Copyright Act 1–2, 5–8, 9–10, 11, 12, 13–14, 15, 16–17, 19, 20, 22, 24–5, 27, 29, 41, 48, 174
copyright law, historical origins 35–7, 39, 53–5
copyright law, historical origins, UK and US copyright laws, influence of 41–5, 48
Copyright Modernization Act 13, 29
exceptions 3, 5, 11–14, 25–6, 28, 29
Lower Canada, and first Copyright Act 41–3
orphan works and cultural and research institutions 383
public exhibition right 22
Trans-Pacific Partnership Agreement 48
WIPO Copyright Treaty, right of making available 174
Canada, cases
Alberta (Education) v. Access Copyright 3, 12, 13, 29
Canadian Admiral Corporation v. Rediffusion 27
Canadian Broadcasting Company v. SODRAC 16, 29
Canadian Private Copying Collective v. Canadian Storage Media Alliance 29
CARFAC v. National Gallery of Canada 17–18
CBC v. SODRAC 4, 14
CCH Canadian v. Law Society of Upper Canada 3, 13, 26, 58, 174
Entertainment Software Association v. SOCAN 3–4, 16, 22
Euro-Excellence v. Kraft Canada 17–18
NRCC v. SOCAN 15
Rogers Commc’ns v. Soc’y of Composers, Authors & Music Publishers of Canada 174
Snow v. The Eaton Centre 10
SOCAN v. Bell Canada 3, 4
SOCAN v. Canadian Association of Internet Providers 28
Tele-Direct (Publications) v. American Business Information 36–7, 39
Théberge v. Galerie d’art du Petit Champlain 2, 36–7
Warman v. Fournier 174
Canada, copyright balancing act 1–30
and Berne Convention 10–11, 20
Index 579

collective societies v. artists’ associations 16–18
collective societies v. collective societies 15–16, 26
collective works 25
communal behaviours and mass uses of works, rise of 27–30
copyright as economic regulation 21–4
copyright as intellectual property right 19–21
copyright v. copyright 5–8
copyright v. neighbouring rights 8–10
and economic rights 3–4
economic rights v. moral rights 10–11
economic tensions 12
education exceptions 12, 13
and exceptions 3, 5, 11, 12, 13–14
exceptions as users’ rights 13–14
fair dealing or fair use exception 13
hidden tensions 18–30
individual, emphasis on 24–7, 29
infringements 6, 7, 25
internet transmissions 28
justifications for copyright law 19–24
licensing 19, 23
and moral rights 5–7, 10–11, 20
and originality 2–3
and property rights 2, 7
public performance right and technical evolution 21–2, 26, 27–8
recording and radio industries 8, 9
remedies 7, 11, 19, 20, 25
remunerated exceptions 13–14
reproduction right 22–3, 28–9
royalties payments 9–10
shifting identities in copyright law 24–30
teacher/copier rights 29
and technological neutrality 4, 16
technological protection measures (TPM) 20
tensions among rights 5–11
tensions between rights and exceptions 11–14
tensions over representation of copyright interests 15–18
theoretical tensions 13–14
visible tensions 4–18
Carson, D. 137
Casas Vallés, R. 343
Cavanillas Mugica, S. 350
cease-and-desist letters 526–7
see also Vietnam copyright infringement
censorship regulations, Vietnam 514–15
Chander, A. 365
children, protection of, EU 450
China
extended collective licenses 428
karaoke bars 428
PPLive v. Tianjin Jinbao Media Network 175
WIPO Copyright Treaty, right of making available 174–5
Chrisafis, A. 444
cinematography
exclusive rights, contemporary intangible cultural heritage 483
private copying exception and payment of fair compensation 327–8
see also photography
Clark, B. 152
co-authorship regulation, Albania 499, 508
see also authors
Cohen-Jehoram, H. 420
collections, existing collections held by museums and archives, contemporary intangible cultural heritage 482
collective management universities and public research organizations, works created in, Spain 344
Vietnam 520–21
collective management and exclusive rights 417–41
and Berne Convention 438, 441
equal treatment policy 421
equal treatment policy exceptions 435–6, 438, 439–40
exploitation 430–31, 433, 436, 439
infringements 429, 439–40
karaoke bars, China 428
library requests for literary works 427–8, 430
licensing 419, 420–24, 425–6, 427, 428, 430, 431, 433, 436, 437, 439
mandatory collective management of exclusive rights 419–20
mandatory collective management, rights in visual arts works displayed in search engine results 431–2, 439–40
orphan works and mass digitisation 428–9, 430
radio broadcasts of copyright protected works, Nordic countries 422–3
'relevant licensing bodies' definition 426
statutory collective management models 419–24
statutory collective management and requirement for express and prior consent 438–40
three-step test 439
collective management and exclusive rights, extended collective licenses 420–24
Australia 430
China 428
France 430–32
Germany 427–8
Hungary 425, 438–9
non-members' rights 422
recent developments 424–30
Slovakia 426–7
UK 425–6
US 428–9, 439
collective management and exclusive rights, out-of-print works, France 418, 426–7, 430–37, 439–42
criticism of, EU Court of Justice proceedings 433–4, 441–2
criticism of 432–7
criticism of, opt-out possibilities for rightsholders 433, 434–6
support for 436–7
collective societies, Spanish model, private copying exception and payment of fair compensation 15–18, 26, 337–8
collective works and authorship principle, universities and public research organizations, Spain 345–6
Canada, copyright balancing act 25
Cominelli, F. 480
commercial interest concerns, search engines, works reproduced and published online by 402–3, 407
common law/civil law compromise 59–60, 204–6, 223
communal behaviours and mass uses of works, Canada 27–30
communication and economic rights of reproduction 216–17, 218–19
to the public see EU right of communication to the public in cases of ubiquitous infringement
to the public, European Court of Justice (CJEU) see European Court of Justice (CJEU) and right of communication to the public
WIPO Copyright Treaty, right of making available 138–40, 141
see also information; notification obligations
compensation
author's remuneration see remuneration of authors and performers in copyright contract law
damage compensation, Vietnam 522, 523, 525, 526, 531–3
digital cultural heritage assets and orphan works 371, 375, 376, 377, 379
musical creativity and sampling of sound recordings 288, 289
private copying see private copying
exception and payment of fair
compensation, EU
universities and public research
organizations, works created in,
Spain 351–2, 357
see also damages
competition
anti-competitive behaviour
concerns, digital cultural
heritage assets and orphan
works 377
competitive substitution concerns,
search engines, works
reproduced and published
online by 404
lack of level playing field,
‘Europeanification’ of moral
rights 212–13
law and market geographical
delineation, online and
streaming services, EU 303–10,
315
compulsory collective management
and author’s resale right, EU
234–53
and Berne Convention 234
Member States’ disparities 236–8
Resale Right Directive and
harmonization 236–8
compulsory collective management
and author’s resale right, EU,
Belgium 238–47
authors not members of collecting
society 239–40, 241, 242, 245,
246
collecting societies and royalties
238–40, 241, 242, 244–5
compulsory collective management
consequences 242, 247
compulsory collective management
switch 240–42
foreign individual beneficiaries 242
obligation to notify and right to
obtain information 245–6
obligation to notify and right to
obtain information, obstruction
and sanctions 246
optional collective management
choice 238–40
public auctions 238–40, 243
resale outside framework of a
public auction 240, 244
unique platform, collecting societies
managing the resale right 243,
244–5
compulsory collective management
and author’s resale right, EU,
France 249–51
collection societies and payment of
royalties 250–51
information provisions 250–51
obligation to notify 251
optional collective management
249–51
compulsory collective management
and author’s resale right, EU,
Netherlands 247–9
authors not members of collecting
society 248–9
collecting societies and royalties
248
information provision on request
248
optional collective management
248–9
computer programs
Albania 503
and graphic user interface, EU 75–8
and source codes, EU 78–81
see also Internet, websites
Conley, N. 274, 275
contemporary intangible cultural
heritage 463–92
and Berne Convention 481–3
communities and groups focus
470–71, 484
consequences of recognition and
implementation by States
479–80
contemporary dance 472–3, 477,
485–6, 488–9
copyright and contemporary
intangible heritage 485–6
copyright and freedom of
expression 487–9
Disability Arts movement 473–5, 476–7, 486, 488
exceptions 482, 488, 489, 491
exclusive rights in cinematographic work and photographs 483
existing collections held by museums and archives 482
and indigenous communities and knowledge 477–9, 481, 484
infringements 481, 487–8, 489
intangible cultural heritage frozen in time 477, 485, 488
intellectual property and human rights 489–91
inventories of ‘living’ intangible cultural heritage 482–3
inventories and safeguarding 475–9, 484–5
inventory-making and copyright 480–83
inventorying of traditional intangible culture, concerns over 476
music and traditional chants 481
origins 464–7
ownership and inventorying 484–5
remedies 481
remixing of tradition with contemporary creativity 478–9
reproduction of artistic works depicting sacred aboriginal knowledge 481
traditional cultural expressions (TCEs) and traditional knowledge (TK) 468–75, 484–5
and UNESCO 464, 466–7, 469–70, 477, 482–3, 485
World Conference of Cultural Policies, Mondiacult report 466
and World Heritage Convention 464–5
and World Intellectual Property Organization (WIPO) 466, 468–9, 483, 484
Cook, T. 143, 145, 148, 176
Coome, R. 490

copying
private copying exception, online and streaming services, EU 313–14
teacher/copier rights, Canada 29
see also reproduction rights
copyright history 31–56
authors and publishers, relationship between 46–7
Berne Convention, Berlin Revision 48
copyright law impacts and effects 46–55
and copyright as ‘property’ 39–40
copyright term extension, influence of 47–55
exceptions 38–9
licensing 42–3
life cycle of printed book as circuit concept 33–4
policy justifications for copyright law 35–45
use and misuse of history in legal discourse 35–40
Corbet, J. 229
counterfeit works, Vietnam 550–51
see also piracy
Crews, K. 402
criminal proceedings, Vietnam 536–7, 550–51
cross-border exploitation, and EU private international law 557, 558–60
cross-border recognition and recordation, digital cultural heritage assets and orphan works 383–5
CSS System and DVD protection 315
see also online and streaming services, EU
cultural heritage
contemporary intangible see contemporary intangible cultural heritage
digital see digital cultural heritage
assets and orphan works
intangible cultural heritage, Vietnam
543–6
Cummings, C. 490
Czarnota, B. 60
Dallon, C. 49
damages
calculation, ‘Europeanification’ of
moral rights, invitation for 221
compensation, Vietnam 522, 523,
525, 526, 531–3
manner in which damages are
accounted for, EU 196–7
see also compensation
dance
contemporary intangible cultural
heritage 472–3, 477, 485–6,
488–9
see also music
Dao Tri Uc 554
Darke, P. 474
Darton, R. 33–4
data capture process and transfer, EU
64–6
data protection, digital cultural
heritage assets and orphan works
389
databases, Database Directive (96/9)
59, 71, 72, 73, 74–5, 118, 119,
143
Davies, C. 462
Davies, G. 214, 227
De Beer, J. 174, 383
De Jong, P. 568
de minimis rule 66, 95, 103, 104, 151
musical creativity and sampling of
sound recordings 279–81, 282,
283–4, 285, 288, 289–90, 291,
292, 293, 294
De Werra, J. 221, 223, 231
Deacon, H. 465, 471, 477, 478, 486
Deazley, R. 31, 45, 540
decoding devices 304–6
see also online and streaming
services
‘deliberate’ intervention issues,
European Court of Justice
(CJEU) and right of
communication to the public 102
Denmark, prohibition against
circumvention 316
Depreeuw, S. 96–134, 144, 183, 189
Derclaye, E. 59, 482
Desbois, H. 121, 122, 223
Dessemontet, F. 198
Dietz, A. 83, 228, 231, 254, 255, 258,
261, 347, 424
differentiated treatment,
‘Europeanification’ of moral
rights, invitation for 229
digital cultural heritage assets and
orphan works 359–90
and Berne Convention requirements
385
compensation considerations 371,
375, 376, 377, 379
copyright law effects 362–4
data protection regulation 389
‘digital misappropriations’ of
museum artefacts without
permission 388–9
digitising and monetising heritage
assets 366–7, 386–9
exceptions option 370–74, 379
exceptions option, EU approach,
cultural heritage, archival
and/or research exceptions
371–3
exceptions option, US approach,
limited remedies or ‘fair use’
exception 373–4
exploitation of humanity’s heritage
385–8
infringements 373, 378–9
licensing 361, 362, 367, 371,
375–85
‘mutual recognition’ principle 384
online accessibility 366, 369, 389
orphan work definition 364–5
out-of-commerce works 365–6, 377,
378–9, 384, 385
public domain works 365
rights and entitlements 388–9
sound recordings, deterioration concerns 367
technology company collaborations 386–7
transaction costs and risk management 367–70, 371
virtual property rights 387
digital cultural heritage assets and orphan works, licensing models 375–85
anti-competitive behaviour concerns 377
cross-border recognition and recordation 383–5
extended collective licensing (ECL) 381–2
France, national statutory, non-voluntary licensing 378–80
Google and voluntary licensing and subscriptions 376–7
government-controlled licensing 382–3
digital environment
Digital Market Strategy, online and streaming services, EU 301–2
digitalization of books without prior authorization of authors and editors 400–407
Vietnam copyright infringement 521–3
see also Internet
Dimita, G. 135–77
Dinh Thi Mai Phuong 541
Disability Arts movement, contemporary intangible cultural heritage 473–5, 476–7, 486, 488
discrimination prohibition
EU 450–51, 454–5
see also moral rights
dispute resolution
Albania 509, 510
remuneration of authors and performers in copyright contract law 270–71
see also individual countries and courts; infringements
distribution right, WIPO Copyright Treaty, right of making available, US 163–6
Dittrich, R. 125
divulgation right, ‘Europeanification’ of moral rights 214, 216–17, 225–6
Do Thi Kim Zung 541
Doi, T. 176
domicile requirement
EU right of communication to the public in cases of ubiquitous infringement 195–6
person domiciled in a Member State but sued for place where harmful event occurred, EU 334
Dommering, E. 209
Dorfman, A. 195
Drahos, P. 32
Dreier, T. 189–90, 218, 229
Ducoulombier, P. 285
Duhanic, I. 288
Dusollier, S. 8, 264, 269
Dutfield, G. 13, 476
DVD protection 315
see also online and streaming services, EU
Dysart, T. 257
Early, J. 467
Echeverria, D. 346
economic relevance, musical creativity and sampling of sound recordings 286–9
economic rights
Albania 502–3, 505, 508
Canada 3–4, 12, 21–4
reproduction and communication to the public comparison, EU 216–17, 218–19
Vietnam 516–17, 518, 520, 531–2, 540
Edlin, A. 376
education exceptions, Canada 12, 13
teacher/copier rights
Index  585

electronic transmission as ‘transfer of ownership’, US 165–6
see also Internet
Ellis, S. 486
embedded website linking, EU 107
see also websites
emission approach, and EU right of communication to the public 184–6, 187–9
encrypted broadcasts, EU 101
see also broadcasts
equal protection principle, Albania 499, 503
equal treatment policy
collective management and exclusive rights 421
European morality/public policy exclusion 446
EU
Biotech Directive (98/44) 452–3
compulsory collective management see compulsory collective management and author’s resale right, EU
Copyright Directive, and WIPO
Copyright Treaty see WIPO
Copyright Treaty, right of making available, EU and Copyright Directive (2001/29)
Database Directive (96/9) 59, 71, 72, 73, 74–5, 118, 119, 143
Enforcement Directive (2004/48) 221, 459
exceptions option, EU approach, cultural heritage, archival and/or research exceptions, digital cultural heritage assets and orphan works 371–3
extended collective licenses 424
legislation and Albanian copyright law see Albanian copyright law and compliance with EU legislation
orphan works and cultural and research institutions 360–61, 363, 368, 369, 371–3, 381–2, 384–5
private copying exception see private copying exception and payment of fair compensation, EU
Resale Right Directive (2001/84) 236–8, 247
Satellite and Cable Directive (93/83) 97, 112, 114, 143, 145, 184, 185, 186, 188, 420, 424
Services Directive (2006/123) 302
Term Directive (2006/116) 59, 69, 224, 266
EU copyright law, originality under 57–84
all types of work 64–6
and author’s personality and personal touch 70, 73–4, 75, 83
civil law and common law originality criteria, compromise between 59–60
CJEU’s case law 63–81
Commission Staff Working Paper 60–61
computer programs and graphic user interface 75–8
computer programs and source codes 78–81
copyright directives and harmonisation 58–61, 74, 83
data capture process and transfer 64–6
database accessibility 72
football fixture lists 71–5
licensing 66, 78
photographs 67–70
protection of expression rather than idea 79–80

Paul Torremans - 9781785361432
Downloaded from Elgar Online at 04/12/2022 05:35:10AM
via free access
sentences or parts of sentences, protection of 64–6
significant skill and labour issues 73–4, 75
Single EU Copyright Title
discussions 61–2
sporting events and retransmission
licences 66–7
sui generis right 71–5
uniform application of EU law 63
EU, Information Society Directive
(2001/29)
collective management and
exclusive rights 434–5
digital cultural heritage assets and
orphan works 379
‘Europeanification’ of moral rights,
invitation for 209, 214, 215, 216
and exclusive rights 86, 89
musical creativity and sampling of
sound recordings 289, 294
online and streaming services 313, 315, 316
and originality under EU copyright
law 69, 70, 76
private copying exception and
payment of fair compensation,
EU 320, 322, 323–4, 328–31, 332, 334–5, 338–42
right of communication to the
and right of communication to the
public in cases of ubiquitous
infringement 180–81, 185–6, 189, 191, 192
search engines, works reproduced
and published online by
411–12, 416
and WIPO Copyright Treaty, right
of making available 142, 144, 148, 156, 159
EU private international law 556–73
accessibility of website (based on
server elsewhere) 563–4
and Berne Convention 556–7, 561
and cross-border exploitation 557, 558–60
exploitation 557, 558, 565
foreseeability and predictability
issues 564–5
harassment concerns 563
infringements 560, 563, 564–6, 567–9, 570–71, 572
jurisdiction given to courts of place
of harmful event and to courts
of place of damage 560–66
jurisdiction over infringement
claims 565–6
jurisdiction over multiple
defendants 566–73
jurisdiction rules and intellectual
property 558–60
multiple defendants 566–73
multiple defendants, harmonization
of national legislation 571–2
multiple defendants, irreconcilable
judgments risk 567–9
photographic copyright 570–73
spider in the web doctrine 567–9
suing in multiple member states
560–66
territoriality principle 558, 561, 562, 565
EU right of communication to the
public in cases of ubiquitous
infringement 178–99
Brussels Regulation Recast 194–6
and communication theory 190–91
divergence at local level 186–90
‘domicile’ requirement 195–6
and emission approach 184–6, 187–9
‘for profit’ criterion 182–3
indispensability of intervention
181–2
and Information Society Directive
180–81, 185–6, 189, 191, 192
international availability of the
internet and localising modern
acts of communication to the
public within the EU 188–91
jurisdiction and applicable law
determination 194–9
Index 587

Chiron Corp. v. Evans Medical 567
Circl Globus v. UCMR – ADA 99–100, 145, 146, 181
Coditel 303, 307, 308
Copydan 158, 322, 331–2, 446
Copyscape France 154, 561
Deckmyn 216, 219, 286, 450–51, 458
Deutsche Grammophon 207–8
DHL Express France v. Chronopost 197
Directmedia 118, 119
DR and TV2 Danmark 63
eDate Advertising 196, 562, 565
EGEDA v. Administracion del Estado 319
Egeda v. Hostelería Asturiana 97, 158
Elliniki Radiophonia Tileorassi 461
Federico Cortés del Valle López v. OHMI 445, 454, 456
Filmspeler 159, 181, 193
Fixtures Marketing 72–3
Football Dataco v. Sportradar 195
Football Dataco v. Yahoo! UK 71–5, 118
Freeport v. Olle Arnoldsson 569, 570, 571, 573
Handte v. Traitements Mecanochimiques des Surfaces 196
Hejduk 185, 563–4, 565
Infopaq International 63, 64–6, 69, 73, 81, 158, 217–18, 277, 482

manner in which damages are accounted for 196–7
‘public’ definition 182
‘pull’ and ‘push’ technologies 189–90
recommunication or subsequent communication of the original communication to ‘new public’ 181
remedies 187, 196–7, 198
responsibility for act 191–3
and Satellite and Cable Retransmission Directive 184, 185, 186, 188
targeting approach 195
uplink stations 188
see also European Court of Justice (CJEU) and right of communication to the public European Copyright Society 149–50
European Court of Human Rights
Ashby Donald and others v. France 286, 488
Pirate Bay v. Sweden 286, 488
European Court of Justice (CJEU)
ACI Adam 158, 313, 314, 322, 330–31, 333
Airfield 101–2, 103, 107, 109, 111, 112–13, 145, 146, 148
Amazon.com International Sales 158
Amazon.com v. Austro-Mechana 322, 329–30, 335–6
Apple v. Samsung 197
Art & Allposters International v. Stichting Pictoright 2, 218–19
Austro-Mechana v. Amazon 333–4
British Horseracing Board 118, 119
Brüstle 63, 450, 452–3, 461
BSA (Bzečnostní softwarová asociace) 73, 75–8, 80, 117–18, 145, 146, 482
<table>
<thead>
<tr>
<th>Reference</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Innoweb</td>
<td>108, 118, 119</td>
</tr>
<tr>
<td>ITV v. TV Catchup</td>
<td>90, 98, 103, 104, 105, 109, 145, 146, 147, 148, 151, 152, 153, 181, 182, 192</td>
</tr>
<tr>
<td>Jonsson v. Les Éditions de L’Avenir</td>
<td>157</td>
</tr>
<tr>
<td>Kadi</td>
<td>449</td>
</tr>
<tr>
<td>Kainz</td>
<td>559</td>
</tr>
<tr>
<td>Lagardère</td>
<td>103, 116, 144, 182, 213</td>
</tr>
<tr>
<td>Leif Emanuel Kraul v. EMI Electrola</td>
<td>208, 303</td>
</tr>
<tr>
<td>Liffers</td>
<td>221</td>
</tr>
<tr>
<td>L’Oréal v. Bellure</td>
<td>443</td>
</tr>
<tr>
<td>L’Oréal v. eBay</td>
<td>195</td>
</tr>
<tr>
<td>Luksan</td>
<td>322, 327–8</td>
</tr>
<tr>
<td>McFadden v. Sony Music Entertainment Germany</td>
<td>286</td>
</tr>
<tr>
<td>Magill</td>
<td>82</td>
</tr>
<tr>
<td>Martinez v. MGN</td>
<td>196</td>
</tr>
<tr>
<td>Mattel v. Woolbro</td>
<td>197</td>
</tr>
<tr>
<td>Mediapixel</td>
<td>103, 144, 182</td>
</tr>
<tr>
<td>Melzer v. MF Global</td>
<td>559, 561–2</td>
</tr>
<tr>
<td>Microsoft Mobile Sales International</td>
<td>322–3</td>
</tr>
<tr>
<td>Murphy v. Media Protection Services</td>
<td>145, 146, 147, 148, 303–8, 309</td>
</tr>
<tr>
<td>Musik-Vertrieb</td>
<td>208</td>
</tr>
<tr>
<td>Musik-Vertrieb membran and K-tel International</td>
<td>303</td>
</tr>
<tr>
<td>Nintendo</td>
<td>64, 154, 315</td>
</tr>
<tr>
<td>Nungesser</td>
<td>308, 309</td>
</tr>
<tr>
<td>Omega Spielhallen v. Oberbürgermeisterin der Bundesstadt Bonn</td>
<td>461–2</td>
</tr>
<tr>
<td>OSA</td>
<td>98, 103, 104, 106, 107, 115, 145, 158, 181</td>
</tr>
<tr>
<td>OSDD</td>
<td>98, 101, 103, 106, 145, 147</td>
</tr>
<tr>
<td>Padawan</td>
<td>322, 323, 324–5, 333–4</td>
</tr>
<tr>
<td>Painer v. Standard Verlags</td>
<td>67–70, 73, 216, 446, 482, 559, 569–71, 572–3</td>
</tr>
<tr>
<td>PAKI Logistics v. OHMI</td>
<td>455</td>
</tr>
<tr>
<td>Pearce v. Ove Arup Partnership</td>
<td>567</td>
</tr>
<tr>
<td>Phil Collins v. Imstrat Handelsgesellschaft</td>
<td>208, 303</td>
</tr>
<tr>
<td>Pinckney v. Mediatech</td>
<td>196, 561, 562–3, 565</td>
</tr>
<tr>
<td>PPL (Phonographic Performance Ltd. Ireland)</td>
<td>89, 98, 101, 103, 104, 115, 116, 117, 145, 147, 148, 149, 151, 154, 155</td>
</tr>
<tr>
<td>Promusicae v. Telefonica de España</td>
<td>154, 459</td>
</tr>
<tr>
<td>R v. Henn and Darby</td>
<td>461</td>
</tr>
<tr>
<td>R v. Pierre Bouchereau</td>
<td>461</td>
</tr>
<tr>
<td>Reha Training v. GEMA</td>
<td>88–9, 90, 91, 98, 100, 101, 104, 109, 114, 115–16, 151, 152–3, 154, 156</td>
</tr>
<tr>
<td>Reprobel</td>
<td>322, 334–5</td>
</tr>
<tr>
<td>Roche Nederland</td>
<td>567, 568–9, 570, 572, 573</td>
</tr>
<tr>
<td>Ryanair v. PR Aviation</td>
<td>74–5</td>
</tr>
<tr>
<td>SABAM v. Netlog</td>
<td>286</td>
</tr>
<tr>
<td>SAS Institute v. World Programming</td>
<td>78–81, 482</td>
</tr>
<tr>
<td>SBS Belgium</td>
<td>89, 98, 110–11, 114, 150–51, 181</td>
</tr>
<tr>
<td>Scarlet Extended v. SABAM</td>
<td>154, 286</td>
</tr>
<tr>
<td>Schmidberger v. Austria</td>
<td>461</td>
</tr>
<tr>
<td>SENA</td>
<td>63, 116</td>
</tr>
<tr>
<td>SGAE v. Rafael Hoteles</td>
<td>63, 90, 97–8, 99, 101, 102, 103–4, 105–6, 107, 109, 119, 132, 133, 134, 139, 144, 145, 146, 147, 148, 149, 151, 152, 153, 158, 180–81, 182, 187, 191, 192, 356</td>
</tr>
<tr>
<td>Soulier and Doke v. Premier Ministre et Ministre de la Communication et de la Communication</td>
<td>99, 379, 380, 382, 433–6, 440</td>
</tr>
<tr>
<td>SPA</td>
<td>98, 103, 107, 181</td>
</tr>
<tr>
<td>Stichting de Thuiskopie</td>
<td>322, 323, 326–8, 333–4</td>
</tr>
</tbody>
</table>

Uradex 114

UsedSoft v. Oracle International 63, 118

Van Dyn 461

VG Wort 322, 328–9, 332–3

Yiadom 63

Ziggo 159–60, 181, 193

Zuid-Chemie 559

European Court of Justice (CJEU) and exclusive rights 85–95 broadcasting and rebroadcasting of works and performances 87–8, 89–94, 95 and Charter of Fundamental Rights 95 and freedom of expression 95 profit-making nature of the broadcast or re-broadcast 91, 95 rental and lending rights 88–9 right of communication to the public 86–94 European Court of Justice (CJEU) and right of communication to the public 96–134 act of ‘communication’ 101–3 authors of computer programs 117–18 author’s right of communication to the public 101–10 broadcasting and rebroadcasting of works and performances 98, 99–103 broadcasting, understanding of 110–11 cable retransmission 98, 106, 111, 114, 125, 128, 129–30 cumulative effect of making works available 104 ‘deliberate’ intervention issues 102 embedded website linking 107 encrypted broadcasts 101 exceptions 116, 131 exclusive rights 108 exploitation 121–2, 123, 128, 129–32 fundamental decision 97–8 holders of neighbouring rights 99, 101, 102, 103, 103–4, 109, 114–17 hyperlinks circumventing paywall 107–8 hyperlinks on a webpage leading to works on another webpage 107, 119 and international treaties, reference to 99–100 interpretation guidelines 99–101 makers and producers of databases 118–19 making available on demand 112 ‘mere provision of physical facilities for enabling or making a communication’, understanding of 102–3 neighbouring right of broadcasting organisations 117 online attribution rights, problems with 210–11 profit, ‘non’ component of 109–10 profit-making nature of communication 100, 102, 114–17 ‘public’, understanding of 103–9 ‘re-utilisation’ and sui generis right 118–19 right of communication to the public for specific types of communication 110–14 satellite broadcasting 101, 107, 109, 111, 112–13 successive communications, proposals for interpretation, and Berne Convention 120–32 successive transmissions and need to ascertain that a ‘new public’ is present 105–7, 108, 131–2 work published without consent of author 108, 110
see also EU right of communication to the public in cases of ubiquitous infringement
European morality/public policy exclusion 442–62
application and expression suggestion 460–62
and Berne Convention 447–8
discrimination prohibition 450–51, 454–5
domestic derogation from the free movement guarantees 460–61
equal treatment policy 446
examples of expressive subject matter 444–6
exclusion from protection of ‘news of the day’ 448
exclusion from protection of ‘official texts’ 448
exploitation 444–5, 449
and freedom of expression 449–50
fundamental rights protection 450–51, 458
fundamental rights protection importance 451–6
fundamental rights protection, and intellectual property law 456, 461–2
human dignity and the integrity of the person 450, 453
infringements 457, 458–9
and international copyright and related rights law 447–9
and international industrial property instruments 448
objective justification for exclusion 449–50
patent protection 452–3, 460, 462
protection by related rights of performances, phonograms and broadcasts 448–9
protection of children 450
protection of rights, freedoms and principles of EU Charter 457–60
requirement for 449–56
and Rome Convention 448
states having same margin of appreciation in determinations of morality and public policy 461–2
trademark protection 454–6, 460
European Patent Office (EPO)
Howard Florey/Relaxin 453, 454
WARF/Stem cells 453
‘Europeanification’ of moral rights, invitation for 200–233
and acquis communautaire 205, 214–15, 216, 218, 226
attrIBUTION right 226
and Beijing Treaty on Audiovisual Performances 202
and Berne Convention 200–202, 214, 216, 217, 218, 221, 223, 226, 227, 231–2
common denominators 223–4
common law/civil law clash 204–6, 223
competition issues and lack of level playing field 212–13
damages calculation 221
differentiated treatment 229
divulgation right 214, 216–17, 225–6
economic rights of reproduction and communication to the public comparison 216–17, 218–19
efficiency harmonization 222
exceptions and limitations applicability 214–16, 219–20, 229–32
exclusions 206, 219
exclusive rights 217
exploitation 203, 205, 211, 213, 214, 217, 229, 230, 232
flexibility considerations 228–32
harmonization competence, lack of 206–9
harmonization process, reasons for inclusion 209–21
harmonization starting points 222–4
historical perspective 207–8
Information Society Directive 209, 214, 215, 216
infringements 210–11, 213, 221, 227
integrity and attribution rights 215, 219
integrity right 226–8
internal market objective 211–13, 220
irreconcilable positions of interested groups 206
judicial solutions, facilitating 217–20
licensing 210, 230, 231
moral rights exclusion from harmonization process 202–9
moral rights exclusion from harmonization process, justification in policy documents 202–4
parody exception 219–20
and personality rights 223–4
protection duration 224–5
public relevance in view of copyright sustainability 222–3
right of adaptation 217
right of withdrawal 228
territoriality principle 213
unfair contracts and unconsccionability, rules against 232
‘user-generated content’ (UGC) effects 209–10, 215
waivability 230–32
and WIPO Copyright Treaty 201–2
and Wittem Code 222, 224–5
exceptions
Albanian copyright law and compliance with EU legislation 498–9
Canada 3, 5, 11–14, 25–6, 28, 29
collective management and exclusive rights 435–6, 438, 439–40
contemporary intangible cultural heritage 482, 488, 489, 491
copyright history 38–9
de minimis exception, musical creativity and sampling of sound recordings 279–81, 282, 283–4, 285, 288, 289–90, 291, 292, 293, 294
digital cultural heritage assets and orphan works 370–74, 379
European Court of Justice (CJEU) and right of communication to the public 116, 131
‘free use’ exception, musical creativity and sampling of sound recordings 277–9, 283–4, 286, 288–9, 290, 295
online and streaming services, EU 302, 313–14
private copying see private copying exception and payment of fair compensation, EU
remuneration of authors and performers in copyright contract law 257, 270
search engines, works reproduced and published online by 408–9, 410–12, 413–14, 415–16
Vietnam copyright infringement 516–17
WIPO Copyright Treaty, right of making available 141, 144, 162
exclusions
European morality/public policy see European morality/public policy exclusion
WIPO Copyright Treaty, right of making available 141, 144, 162
European Court of Justice (CJEU) see European Court of Justice (CJEU) and exclusive rights
European Court of Justice (CJEU) and right of communication to the public 108
‘Europeanification’ of moral rights, invitation for 217
musical creativity and sampling of sound recordings 273–4, 294
online and streaming services, EU 304, 307, 315
search engines, works reproduced and published online by 406
WIPO Copyright Treaty, right of making available 138–40, 141, 161–2, 163, 166–7, 170
exploitation
collective management and exclusive rights 430–31, 433, 436, 439
digital cultural heritage assets and orphan works 385–8
EU private international law 557, 558–60, 566
European Court of Justice (CJEU) and right of communication to the public 121–2, 123, 128, 129–32
European morality/public policy exclusion 444–5, 449
‘Europeanification’ of moral rights, invitation for 203, 205, 211, 213, 214, 217, 229, 230, 232
musical creativity and sampling of sound recordings 287–8, 289
online and streaming services, EU 300–301, 303–10
private copying exception and payment of fair compensation, EU 328, 331
remuneration of authors and performers in copyright contract law 256, 257, 258, 260, 262, 263–4, 265, 266–8, 269, 270
universities and public research organizations, works created in, Spain 345, 346, 348–9, 350, 351–2, 353–4, 355–6
Vietnam copyright infringement 519–20
WIPO Copyright Treaty, right of making available 149–50
expression protection, rather than idea, EU 79–80
expressive subject, European morality/public policy exclusion 444–6
extended collective licences
digital cultural heritage assets and orphan works 381–2
and exclusive rights see collective management and exclusive rights, extended collective licenses
fair compensation, private copying see private copying exception and payment of fair compensation, EU
fair and equitable enforcement, Vietnam 529
fair use doctrine
Canada 13
musical creativity and sampling of sound recordings 284–5
search engines, works reproduced and published online by 394–407
false attribution, right to prevent, Vietnam 550
see also attribution rights
Farrand, B. 301
Favale, M. 85, 443
Fawcett, J. 178, 557, 561, 567
Feather, J. 32
Fernanda, H. 407, 410
Festa, M. 39
feudal copyright practices, Vietnam 542–6
Ficsor, M. 135, 136, 137, 138, 161, 184, 186, 190, 191, 410, 417, 438
films, exclusive right to exhibit 307
Index 

see also online and streaming services, EU
Finland, CSS System and DVD protection 315
Flechsig, N. 261
flexibility considerations, ‘Europeanification’ of moral rights, invitation for 228–32
flexible exceptions, search engines, works reproduced and published online by 411–12, 415–16
football fixture lists, EU 71–5
see also sporting events
‘for profit’ criterion, EU right of communication to the public in cases of ubiquitous infringement 182–3
foreign authors’ rights, Vietnam 554
foreign copyright owners’ concerns over censorship, Vietnam 514–15
foreign investment focus, Vietnam 512–13
foreseeability and predictability issues, EU 564–5
Foucault, M. 57
Frabboni, M. 360, 371, 381
France
best-seller clause 262
collective agreements on remuneration 261
colonization, and transplantation of copyright law, Vietnam 542, 546–9
compulsory collective management and author’s resale right see compulsory collective management and author’s resale right, EU, France
digital cultural heritage assets and orphan works, licensing 378–80, 384
Editions du Seuil v. Google 378
extended collective licenses 430–32
Les Misérables 224
national statutory, non-voluntary licensing, digital cultural heritage assets and orphan works 378–80
out-of-print works and collective management see collective management and exclusive rights, out-of-print works, France
Playmedia v. France Televisions 150
private copying and user responsibility 338
proportional remuneration 256–7
publishing contracts for e-books 264
publishing contracts, ‘just and fair remuneration’ 257–8
reporting obligations 269–70
reprography rights 420
termination right 266–7, 268
free movement, EU 74, 302, 305, 321–2, 460–61
‘free use’ exception, musical creativity and sampling of sound recordings 277–9, 283–4, 286, 288–9, 290
freedom of expression
contemporary intangible cultural heritage 487–9
and European Court of Justice (CJEU) and exclusive rights 95
and European morality/public policy exclusion 449–50
Internet and WIPO Copyright Treaty 154
frozen in time, intangible cultural heritage 477, 485, 488
fundamental rights protection
European morality/public policy exclusion 450–56, 458, 461–2
importance, European morality/public policy exclusion 451–6
musical creativity and sampling of sound recordings 284, 285
see also human rights
García-Castrillón, C. 198
Garnett, K. 60, 214, 227
Garnett, M. 281
Garrote Fernandez-Diez, I. 319
Gaudrat, P. 227
Gaut, B. 60
Geiger, C. 141, 217–18, 279, 285, 286
Geist, M. 49–50
Geller, P. 187
Gendreau, Y. 1–30, 31, 43
geo-blocking, see under online and streaming services
Gera, M. 427
Germany
adequate remuneration 257–8, 261
best-seller clause 262–3
Copyright Act 83
Das Boot 263
Destructive Emotions 259
dispute resolution for violation of collective agreements 271
extended collective licenses 427–8
Metall auf Metall 274, 275, 276–9, 283–4, 285–6, 287–8, 290
Musikfragmente 259
ownership of copyright in favour of university professors 347
Pirates of the Caribbean 263
prohibition of unauthorized music sampling 275
remuneration and ‘principle of participation’ 259–60
reporting obligations 270
right to recall 265, 267, 268
search engines and right of quotation 408–9
Talking to Addison 259
unauthorised 3D scan of Queen Nefertiti bust, Neues Museum, Berlin 388
Gervais, D. 58, 59–60, 420, 421
Giannopoulou, A. 205, 212, 213, 231
Ginsburg, J. 19, 122, 124, 125, 139, 169, 178, 183, 189–90, 198, 200, 205, 227, 230, 417, 430, 431, 448
Goldsack, J. 480
Goldstein, P. 190, 232, 556
Goold, P. 195
Gordon, W. 195
Gotzen, F. 224
Graziadei, M. 540
Greece
private copying and user responsibility 338
remuneration due to the author or performer 256
Green, J. 53
Greenleaf, G. 48
Griffiths, J. 66, 89, 118, 141, 217, 218, 417
Grimmelman, J. 391, 392, 393
Groscheide, W. 212, 213, 230, 255, 258
Guibault, L. 381, 417–18, 421, 422, 423, 430
Gutsche, K. 261
Hansen, D. 360
harassment concerns, EU private international law 563
Hargreaves, I. 367, 424–5
harmonization and ‘Europeanification’ of moral rights, invitation for 202–24
multiple defendants, harmonization of national legislation, EU 571–2
Hart, R. 60
Hasneziri, L. 501
Helfer, L. 284
Hetcher, S. 195
Hétu, M. 23
Hilty, R. 418, 541
hip-hop music, musical creativity and sampling of sound recordings 279
history of copyright see copyright history
Hoaglund, J. 60
Hoeren, T. 261
Holderness, M. 212
Hooker, M. 546–7
Howsam, L. 32, 33
Hubin, J.-B. 144
Hugenholtz, P. 94, 141, 190, 204, 213, 214, 230, 232, 257, 258, 261, 262, 424–5, 556
Hughes, J. 39–40
human rights
human dignity and the integrity of
the person, EU 450, 453
and intellectual property,
contemporary intangible
cultural heritage 489–91
see also fundamental rights
protection
Hungary, extended collective licenses
425, 438–9
hyperlinks, European Court of Justice
(CJEU) and right of
communication to the public
107–8, 119
see also websites
images, reduced and low resolution
397–8
thumbnails 395–6, 408, 411
see also search engines, works
reproduced and published
online by
implied licenses 399, 410, 411
see also search engines, works
reproduced and published
online by
indexation process 392–3
see also search engines, works
reproduced and published
online by
India, orphan works and cultural and
research institutions 383
indigenous communities and
knowledge 477–9, 481, 484
see also contemporary intangible
cultural heritage; traditional
cultural expressions (TCEs)
and traditional knowledge
(TK)
industrial property rights
international instruments 448
universities and public research
organizations, Spain 345, 349,
353
see also property rights
information
obligation to notify and right to
obtain information, compulsory
collective management,
Belgium 245–6
provision on request, compulsory
collective management and
author’s resale right,
Netherlands 248
provisions, compulsory collective
management and author’s
resale right, EU, France
250–51
see also communication;
notification obligations
infringements
Canada, copyright balancing act 6,
7, 25
collective management and
exclusive rights 429, 439–40
communication to the public right
see EU right of communication
to the public in cases of
ubiquitous infringement
compensation, Albania 497
contemporary intangible cultural
heritage 481, 487–8, 489
of copyright owners rights and EU
Enforcement Directive 458–9
digital cultural heritage assets and
orphan works 373, 378–9
EU private international law 560,
563, 564–6, 567–9, 570–71,
572
European morality/public policy
exclusion 457, 458–9
‘Europeanification’ of moral rights,
invitation for 210–11, 213,
221, 227
monetary fines and warnings,
Vietnam 534–6, 537
musical creativity and sampling of
sound recordings 276, 277,
278, 280, 282, 283, 287–9
online and streaming services, EU
300–301, 313–15
596 Research handbook on copyright law

search engines, works reproduced and published online by 397, 399, 401, 402, 406, 407, 408
Vietnam see Vietnam copyright infringement
WIPO Copyright Treaty, right of making available 144, 157, 162, 169, 171–2, 174
see also dispute resolution;
individual countries and courts
intangible cultural heritage see contemporary intangible cultural heritage
integrity right
‘Europeanification’ of moral rights 215, 219, 226–8
Vietnam 550
intellectual property law
copyright as intellectual property right, Canada 19–21
copyright protection under, Vietnam 514–21, 525–37
EU private international law 558–60, 564–5
and fundamental rights protection, EU 456, 461–2
and human rights, contemporary intangible cultural heritage 489–91
universities and public research organizations, works created in, Spain 345–6, 349, 350–51, 353–4
Vietnam copyright infringement 512–13
see also property rights
internal market objective, ‘Europeanification’ of moral rights 211–13, 220
international agreements, and
Albanian copyright law 503, 504
international availability of the internet and localising modern acts of communication to the public, EU 188–91
international law
EU private see EU private international law
and European morality/public policy exclusion 447–9
international treaties, reference to, European Court of Justice (CJEU) and right of communication to the public 99–100
Internet
electronic transmission as ‘transfer of ownership’, US 165–6
freedom of expression, WIPO Copyright Treaty 154
international availability and localising modern acts of communication to the public within the EU 188–91
linking and framing, WIPO Copyright Treaty 148–50
online and streaming services see online and streaming services, EU
search engines see search engines, works reproduced and published online by software piracy, Vietnam 523–5
transmissions, Canada 28
Vietnam 521–3
see also computer programs; digital environment; websites
inventories, contemporary intangible cultural heritage 475–85
Italy, General Hospital Corp v. Asclepion Laser Technologies 571
Izyumenko, E. 286
Jacob, A. 195
Janke, T. 481
Janssens, M.-C. 59, 200–233
Japan
orphan works and cultural and research institutions 383
WIPO Copyright Treaty, right of making available 175–6
Jaszi, P. 484
Jeanneney, J.-N. 429
Johns, A. 32
Index 597

Johnston, A. 207
Jones, J. 57
Jordanova, J. 40
journalistic works, Vietnam 519–20
Joyce, C. 49
Judge, E. 58
Jütte, B. 273–97, 313

karaoke bars, China 428
Karjala, D. 49
Karnell, G. 381, 421, 422, 425
Kasunic, R. 166
Khong, D. 45
Kieu Thi Thanh 541
Kikkis, I. 230
Kim, S. 274
Kjellgren, A. 227
Kono, T. 485
Koo, J. 178–99
Koskinen-Olsson, T. 421, 422
Koumantos, G. 58, 83, 557
Kraetzig, V. 286
Kraut, A. 489
Kur, A. 218, 567
Kurin, R. 463, 467, 469, 470, 471, 482, 484–5, 486
Kuruk, P. 485

Lambrecht, M. 229
Le Hong Hanh 541
Le Tai Trien 548, 549
Le Thi My Nhan 548, 550, 551, 554
Legrand, P. 539, 540
Leistner, M. 275, 276, 285, 287
Lemley, M. 377
Leonard, A. 227
levies
detachable memory cards and private copying, EU 332
private copying exception and payment of fair compensation, EU 325–6, 335–6
Li, T. 428
Li, X. 53
library requests for literary works, collective management and exclusive rights 427–8, 430
licensing
Canada, copyright balancing act 19, 23
collective management and exclusive rights 419, 420–24, 425–6, 427, 428, 430, 431, 433, 436, 437, 439
copyright history 42–3
digital cultural heritage assets and orphan works 361, 362, 367, 371, 375–85
EU copyright law 66, 78
'Europeanification' of moral rights 210, 230, 231
musical creativity and sampling of sound recordings 279, 288, 291, 292, 293
online and streaming services, EU 301, 303–4, 308, 309, 312–13
remuneration of authors and performers in copyright contract law 259, 263, 264–5, 267, 268
search engines, works reproduced and published online by 394, 398, 399, 406, 409
Vietnam copyright infringement 519, 523–4, 525, 532
Lindberg, S. 45
Lindner, B. 139
linking and framing on the internet, WIPO Copyright Treaty 148–50
linking to unauthorised content constitutes communication to the public, WIPO Copyright Treaty 153–9
Lister, D. 444
Liu, J. 50
‘living’ intangible cultural heritage 482–3
see also contemporary intangible culture heritage
Lixinski, L. 464, 471
Lobban, M. 31–2
Logan, W. 490
Lucas, A. 83, 187, 257, 267
Lucas-Schloetter, A. 58, 59, 201, 205, 214, 216, 225, 226, 228, 254–72, 347
McCann, A. 467, 470
McGill, M. 41
Mackert, L. 274, 275, 276, 278
Mackrell, J. 472
McLaren, E. 43
Macmillan, F. 470
Mags, P. 420
Makeen, M. 124, 128, 130, 183, 184, 185, 186, 187, 190, 191
Margoni, T. 217
mass digitisation, orphan works 428–9, 430
Matulionyte, R. 178, 198
May, C. 38
Mazziotti, G. 301
memory cards, levies on detachable, EU 332
Menell, P. 164
Meng, D. 398
Mezei, P. 425
Milliken, A. 445
Minero, G. 59, 319–42
Minh Cuong 529
monetary fines and warnings, Vietnam 534–6, 537
see also infringements
Moran, C. 66
Morrison, D. 281
Mueller, J. 281
Mullisi, B. 493–511
multiple defendants, EU private international law 566–73
irreconcilable judgments risk 560–69
museums
‘digital misappropriations’ of museum artefacts without permission 388–9
existing collections held by, contemporary intangible cultural heritage 482
music
musicians and artists, Vietnam 520–21
and traditional chants, contemporary intangible cultural heritage 481
see also dance
musical creativity and sampling of sound recordings 273–97
accessory nature of sound recording 289–90
average audience recognizing appropriation 280–81
bright-line rule for music sampling 275, 282
compensation considerations 288, 289
consequences for music sampling 290–96
de minimis exception 279–81, 282, 283–4, 285, 288, 289–90, 291, 292, 293, 294
economic relevance of sampling 286–9
evolving arguments 282–90
exclusive rights 273–4, 294
exploitation 287–8, 289
fair use doctrine 284–5
‘free use’ exception 277–9, 283–4, 286, 288–9, 290, 295
fundamental rights protection 284, 285
Index 599

Germany, Metall auf Metall 274, 275, 276–9, 283–4, 285–6, 287–8, 290
hip-hop music 279
infringements 276, 277, 278, 280, 282, 283, 287–9
licensing 279, 288, 291, 292, 293
music producer reproducing sample of equal quality 277–8, 279
phonogram right 277, 279, 280, 286–7, 288
pre-existing works used for inspiration for author’s own creativity 277
quantitative and qualitative limits 283–4
sampling as art form 284–6
sound recordings and musical compositions, distinction between 282
and three-step test under Article 13 TRIPs 289
US, Bridgeport v. Dimension 274, 275, 279–82, 283–5, 289–90
‘mutual recognition’ principle, digital cultural heritage assets and orphan works 384
Mysoor, P. 183

Nafziger, J. 486
Nair, M. 43
neighbouring rights, EU 99, 101, 102, 103, 103–4, 109, 114–17
Neilson, F. 53, 54
Nelles, J. 388
Nérisson, S. 417–41
Netanel, N. 284
Netflix contracts 312–13
see also online and streaming services, EU
Netherlands
adequate remuneration 257, 261
best-seller clause 262–3
compulsory collective management and author’s resale right see compulsory collective management and author’s resale right, EU, Netherlands
Informatierecht/AMI 129
right to recall 265–6
Simonis & Buunk v. Stichting Pictoright 248
Neuberger, D. 443
Neumann, S. 180
‘new public’ consideration
EU right of communication 181
European Court of Justice (CJEU) and right of communication to the public 105–7, 108, 131–2
search engines, works reproduced and published online by 409–10
WIPO Copyright Treaty 145, 149–50, 155–6
Newman, S. 206, 223, 225, 228, 232
news of the day, exclusion from protection of, EU 448
news services, search engines, works reproduced and published online by 398–400
Ng, A. 45
Nguyễn Hồ Bích Hằng 512–38
Nguyen Khanh Phuong 548
Nguyễn Ngọc Tiên 545
Nhung Tuyet Tran 543, 545
Nicholds, K. 164
Niemann, F. 274, 275, 276, 278
Nimmer, D. 135
Niu, W. 60
Nocella, L. 204
non-property, moral rights, Albania 496, 498–9, 502
Nordemann, J. 286
Nordemann, W. 122, 420
Nordic countries, radio broadcasts of copyright protected works 422–3
notification obligations
compulsory collective management, Belgium 245–6
compulsory collective management, France 251
see also communication; information
Nuni, A. 501

Downloaded from Elgar Online at 04/12/2022 05:35:10AM via free access
Ochoa, T. 45, 49
official texts, exclusion from protection of, EU 448
Ohly, A. 178, 183
online accessibility, digital cultural heritage assets and orphan works 366, 369, 389
online attribution rights, European Court of Justice (CJEU) and right of communication to the public 210–11
online publishing, and search engines see search engines, works reproduced and published online by
online and streaming services, EU 298–318
active sales 304
audiovisual services and geo-blocking 311
circumventing geo-blocking 310, 311–16
circumventing geo-blocking, copyright infringement 313–14
circumventing geo-blocking, violation of user terms 312–13
competition law and market geographical delineation 303–10, 315
copyright-protected online services 302
CSS System and DVD protection 315
decoding devices 304–6
Digital Market Strategy 301–2
exceptions 302, 313
exclusive rights 304, 307, 315
exploitation 300–301, 303–10
geo-blocking 310–11, 315–16
Geo-Blocking Regulation 302
infringements 300–301, 313–15
licensing 301, 303–4, 308, 309, 312–13
Netfix contracts 312–13
online service subscription restrictions 306–8
passive sales 304–5, 306–7, 308–10
portability and geo-blocking regulations 300–302
Portability Regulation 301–2
private copying exception 313–14
and Services Directive 302
Smart DNS proxy server to circumvent geo-blocking 310, 315
subscriber who is temporarily present in a Member State 301
Technological Protection Measures (TPM) 301, 310–11
Technological Protection Measures (TPM) circumvention 314–16
technology transfer agreements 304–5, 308–9
territorial exclusivity of TV broadcasters 303–6
VPN-connection to hide IP address 310, 315
see also Internet
opt-out possibilities for rightsholders, out-of-print works, France 433, 434–6
optional collective management
Belgium 238–40
France 249–51
Netherlands 248–9
see also compulsory collective management and author’s resale right
orphan works
and digital cultural heritage see digital cultural heritage assets and orphan works
and mass digitisation, collective management and exclusive rights 428–9, 430
out-of-print works
and collective management see collective management and exclusive rights, out-of-print works
digital cultural heritage assets and orphan works 365–6, 377, 378–9, 384, 385
Owens, R. 49–50
ownership and inventorying, contemporary intangible cultural heritage 484–5
ownership rights, universities and public research organizations see universities and public research organizations, works created in, Spain

Pallante, M. 38, 39
parody exceptions, EU 219–20
search engines, works reproduced and published online by 397
patent protection, European morality/public policy exclusion 452–3, 460, 462
Patterson, L. 45, 49
paywall, hyperlinks circumventing, European Court of Justice (CJEU) and right of communication to the public 107–8
see also websites
performance rights broadcasting and rebroadcasting, European Court of Justice (CJEU) and exclusive rights 87–8, 89–94, 95
Canada 21–2, 26, 27–8
European morality/public policy exclusion 448–9
intangible cultural heritage, Vietnam 543–6
performers’ remuneration see remuneration of authors and performers in copyright contract law
US 162–3, 166–70
see also artists; broadcasting
personality rights, and 'Europeanification' of moral rights 223–4
Pham Duy Nghia 544
phonogram rights
European morality/public policy exclusion 448–9
musical creativity and sampling of sound recordings 277, 279, 280, 286–7, 288
photography EU copyright law, originality under 67–70
EU private international law 570–73
exclusive rights, contemporary intangible cultural heritage 483
see also cinematography
Pila, J. 205–6, 207, 232, 442–62
piracy Vietnam 523–6
see also counterfeit works
Pistorius, T. 202
Plomer, A. 443
Podszun, R. 276, 289
Poirier, P. 124
Pollock, R. 51
Poole, C. 486
portability and geo-blocking regulations 300–302
see also online and streaming services
Portugal, remuneration due to the author or performer 256
Pötzlberger, F. 407, 411
pre-existing works used for inspiration for author’s own creativity 277
see also musical creativity and sampling of sound recordings
precautionary measures, remuneration of authors and performers in copyright contract law 264
‘principle of participation’, remuneration of authors and performers in copyright contract law 259–60
private copying exception, online and streaming services, EU 302, 313–14
private copying exception and payment of fair compensation, EU 319–42
comparable levy paid in another Member State 330
compensation funds paid to social and cultural institutions set up for benefit of those entitled 330
compensation variations in different Member States 323
copies made in equipment belonging to a third party 331–2, 333
exploitation 328, 331
free movement of goods and services and national administrations 321–2
harm suffered by rightholders arising on territory where final private users reside 326–7
indiscriminate application combined with reimbursement scheme 329
intended solely for professional use 324–5
levies on detachable memory cards 332
levy system combining lump-sum remuneration fixed in advance and proportional remuneration fixed after fact 335–6
levy-based scheme for media and equipment that allow reproduction of copyright works 325–6
lump-sum remuneration paid prior to reproduction operation 335
national legislation introducing undifferentiated system for recovering fair compensation 335
objective suitability of products for private copying 326
person domiciled in a Member State but sued for place where harmful event occurred 334
previous CJEU judgments 323–36
principal director as author of cinematographic work, right to fair compensation 327–8
private copies made from an unlawful source 330–31, 333
professional purchases of recording products 326
rebuttable presumption of private use of recording media marketed to natural persons 329–30
recording products made available to consumers 326
remuneration or compensation for the harm to rightholders 320–21
rightholder’s authorisation of reproduction of protected work and fair compensation 329
Spanish model, financing fair compensation from State budget 336–42
Spanish model, financing fair compensation from State budget, CJEU conclusion of incompatibility with InfoSoc Directive 341–2
Spanish model, financing fair compensation from State budget, intellectual property rights collecting societies 337–8
technological protection measures, voluntary nature of 333
work made available subject to payment 332–3
private international law, EU see EU private international law
private international law professional use, private copying, EU 324–5, 326
profit-making nature of broadcast or re-broadcast 91, 95
profit-making nature of communication 100, 102, 114–17
property rights
Canada 2, 7
copyright as 39–40
industrial property rights see industrial property rights and moral rights, Albania 496 virtual property rights, digital cultural heritage assets and orphan works 387 see also intellectual property law proportional remuneration, authors and performers in copyright contract law 256–7 Prott, L. 469 public auctions, compulsory collective management and author’s resale right, Belgium 240, 243, 244 public display, US 170–72 public domain works, digital cultural heritage assets and orphan works 365 public exhibition right 22 public performance see performance rights public policy exclusion, and morality see European morality/public policy exclusion public rectification and apology, Vietnam 533 public research organizations see universities and public research organizations, works created in Spain publishing authors and publishers, relationship between 46–7 contracts for e-books, remuneration of authors 264 online see search engines, works reproduced and published online by publication rights, universities and public research organizations, Spain 351 publication rights, Vietnam 550 published in foreign country, protection of copyright, Albania 498 work published without consent of author, EU 108, 110 see also authors; books ‘pull’ and ‘push’ technologies, EU right of communication to the public 189–90 Quinn, B. 444 Quinn, D. 399 Quintais, J. 313 quotation right ‘Europeanification’ of moral rights 215–16 search engines, works reproduced and published online by 408–12 radio broadcasts of copyright protected works, Nordic countries 422–3 industries, and recording, Canada 8, 9 see also broadcasting Rajan, S. 205 Ramalho, A. 207, 213, 215, 216 Raz, J. 447 ‘re-utilisation’ and sui generis right, EU 118–19 Reber, N. 263 rebroadcasting works and performances, European Court of Justice (CJEU) 87–8, 89–94 see also broadcasting rebuttable presumption of private use of recording media marketed to natural persons, EU 329–30 recall right, remuneration of authors and performers 265–6 recording and private copying, EU 326, 329–30 and radio industries, Canada, copyright balancing act 8, 9 see also broadcasting Reding, V. 361 reduced and low resolution images 397–8
see also search engines, works reproduced and published online by
Reilly, T. 275
Reinbothe, J. 122, 136, 139, 140, 190, 418
Reindl, A. 178, 188
‘relevant licensing bodies’ definition, collective management and exclusive rights 426
remedies
administrative, Vietnam 534–6, 537
Canada 7, 11, 19, 20, 25
civil, Vietnam 527–33
contemporary intangible cultural heritage 481
digital cultural heritage assets and orphan works 373–4
EU right of communication to the public in cases of ubiquitous infringement 187, 196–7, 198
remuneration
exceptions, Canada 13–14
Vietnam 517, 518–20
see also royalties
remuneration of authors and performers in copyright contract law 254–72
adequate remuneration 257–8
best-seller clause 262–4
determination of appropriate remuneration 259–61
dispute resolution procedure 270–71
ex ante control 256–61
ex post control 262–8
exceptions 257, 270
exploitation 256, 257, 258, 260, 262, 263–4, 265, 266–8, 269, 270
licensing 259, 263, 264–5, 267, 268
precautionary measures 264
‘principle of participation’ 259–60
proportional remuneration 256–7
publishing contracts for e-books 264
remuneration enforcement 268–71
remuneration type 256–8
reporting obligations 268–70
right to recall 265–6
termination of contract and reversion of rights 264–8
translations 259
transparency issues 268–9
‘use it or lose it’ clause suggestion 267–8
Rengifo, E. 391–416
reproduction rights
artistic works depicting sacred aboriginal knowledge 481
Canada 22–3, 28–9
online see search engines, works reproduced and published online by
rightholder’s authorisation of reproduction of protected work, EU 329
Vietnam 520–21, 553
see also copying
research organizations see universities and public research organizations, works created in, Spain
responsibility for act, EU right of communication to the public 191–3
retransmission, sporting events and retransmission licences, EU 66–7
see also broadcasting
reversion, termination of contract and reversion of rights, authors and performers 264–8
Ricketson, S. 122, 124, 125, 189, 200, 230, 363, 385, 438, 448
Ricolfi, M. 61
Rideau, F. 19, 547
Rigamonti, C. 200
Riis, T. 298–318, 381–2, 421, 422–3, 441
Rimmer, M. 49, 50
risk management, and transaction costs, digital cultural heritage assets and orphan works 367–70, 371
Rosati, E. 60, 219
Rose, M. 32, 45, 49, 484
Rosén, J. 226, 381, 418, 424
Index 605

royalties
Canada 9–10
collecting societies, Belgium 238–40, 241, 242, 244–5
collecting societies, Netherlands 248
collection societies, France 250–51
resale royalty right 22
Vietnam 517, 518–20, 553–4
see also remuneration
Rubinfeld, D. 376
Rumphorst, W. 184, 185–6, 187
safeguarding inventories, contemporary intangible cultural heritage 475–9, 484–5
Saffer, J. 38
Sainsbury, M. 226
St Clair, W. 33, 51, 52
sampling sound recordings see musical creativity and sampling of sound recordings
Samuelson, P. 137, 365, 367
sanctions, compulsory collective management, Belgium 246
Sanders, R. 163
satellite broadcasting, EU 101, 107, 109, 111, 112–13
Satellite and Cable Directive (93/83) 97, 112, 114, 143, 145, 184, 185, 186, 188, 420, 424
see also broadcasting
Savatier, R. 224
Scassa, T. 1
Schack, H. 271–2
Schonhofen, S. 283, 289
Schonning, P. 178
Schonwald, R. 399
Schöttle, V. 424
Schovsbo, J. 298–318, 381–2, 421, 422–3, 441
Schultz, T. 194, 196
scientific institutions recognized as 'authors' of works, Albania 499
Scott, P. 444
Seadle, M. 212

search engines, visual arts works displayed in search engine results 431–2, 439–40
search engines, works reproduced and published online by 391–416
Andean Law 412–14
and author’s exclusive rights 405–6
books and snippet views 400–407
caching process 393
commercial interest concerns 402–3, 407
competitive substitution concerns 404
digitalization of books without prior authorization of authors and editors 400–407
European law and right of quotation 408–12
exceptions 408–9, 410–12, 413–14, 415–16
exclusive rights 406
factual character of the original book 403
flexible exceptions 411–12, 415–16
implied licenses 399, 410, 411
indexation process 392–3
infringements 397, 399, 401, 402, 406, 407, 408
licensing 394, 398, 399, 406, 409
‘new public’ consideration 409–10
news services 398–400
parody 397
quantitative criterion 403–4
reduced and low resolution images 397–8
relation types 392–3
three-step test 409, 413–14
thumbnails (reduced images) 395–6, 408, 411
transformation of artistic work provides benefit to society 396–8, 400–402, 415
‘transformative use’ 395
transformed work taking market or value from original work 399
unprotected content 410–11
US law and fair use doctrine 394–407
user and the content provider, relationship between 393–4
see also Internet, online and streaming services, EU
Seitel, P. 465, 467
self-protection measures, Vietnam 526–7
Sell, S. 38
Senftleben, M. 141, 158, 392, 408, 409, 413, 414
sentences or parts of sentences, protection of, EU 64–6
server test, US 170–72
Severo, M. 480
Seville, C. 43, 59
Shapiro, T. 301
Siefkas, J. 544
Sigurdardottir, V. 421, 422
Singapore, Record TV v. MediaCorp TV Singapore 144
Sirinelli, P. 83
Sirviniskaite, I. 203, 208, 220
Skarstein, V. 381
Skounti, A. 480
Skrydstrup, M. 482
Slovakia, extended collective licenses 426–7
Smart DNS proxy server to circumvent geo-blocking 310, 315
see also online and streaming services
snippets, and books, search engines, works reproduced and published online by 400–407
socialist reform (1947–1982), Albania 494–9
software piracy, Vietnam 523–5
see also counterfeit works; Internet
Somoano, M. 274
sound recordings
deterioration concerns, digital cultural heritage assets and orphan works 367
sampling see musical creativity and sampling of sound recordings
South Korea, orphan works and cultural and research institutions 383
Spain
private copying, financing fair compensation from State budget 336–42
universities and public research organizations see universities and public research organizations, works created in, Spain
spider in the web doctrine, EU private international law 567–9
sporting events
football fixture lists, EU 71–5
and retransmission licences, EU 66–7
Staats, R. 427
Stamatoudi, I. 57–84, 86, 178–9, 221
statutory collective management 419–24
and requirement for express and prior consent 438–40
see also collective management and exclusive rights
Stefano, M. 471
Sterling, J. 191, 222
Sternberg, N. 60
Stokes, S. 211
Stone, P. 195
streaming services
‘offered’ before transmission takes place, US 169
online see online and streaming services
Strowel, A. 19, 204, 381, 429
Suarez, M. 33
sui generis right, EU 71–5
and ‘re-utilisation’ 118–19
suing in multiple member states, EU private international law 560–66
Sunder, M. 365
sustainability, public relevance in, 'Europeanification' of moral rights 222–3
Sutherland, A. 473
Suthersanen, U. 13, 31, 43, 359–90
Sydnor, T. 51, 137
Synodinou, T. 187
Szychowska, K. 568
Ta Van Tai 544
Tapia, R. 346
Tawfik, M. 31–56
teacher/copier rights, Canada 29
education exceptions 12, 13
technological neutrality, Canada 4, 16

three-step test 140–41
musical creativity and sampling of sound recordings 289
search engines, works reproduced and published online by 409,
413–14
thumbnails (reduced images) 395–6, 408, 411
see also search engines, works reproduced and published online by

Thach Lam 552

Thuy Thu 529

Torremans, P. 82, 85–95, 178–9, 205–6, 207, 211, 213, 222, 226,
231, 232, 388, 456, 457, 556–73
Tozzi, S. 152

traditional cultural expressions (TCEs) and traditional knowledge (TK)
468–75, 484–5
see also contemporary intangible cultural heritage; indigenous communities and knowledge

Tran Kien 539–55
Trần Đình Thu 552, 553

transaction costs and risk management, digital cultural heritage assets and orphan works
367–70, 371

transformation of artistic work provides benefit to society
396–8, 400–402, 415
see also search engines, works reproduced and published online by

translations, remuneration of authors and performers 259

transparency issues, remuneration of authors and performers 268–9
transplantation of copyright law and Vietnam’s experience 539–55
‘authors’ rights’ (droit d’auteur) and moral rights 540, 546–9
‘authors’ rights’ (droit d’auteur) and moral rights, reception and application in Vietnam 549–54
and Berne Convention 548–9
‘copyright law’ and economic rights 540
copyright litigation initiation 552–3
counterfeit works 550–51
criminal penalties 550–51
feudal copyright practices 542–6
foreign authors’ rights 554
French colonization 542, 546–9
Han Mac Tu Poem litigation 552–3
intangible cultural heritage (performance rights over songs and dances) 543–6
reproduction rights 553
right of integrity 550
right of publication 550
right to prevent false attribution 550
royalty rights 553–4

see also Vietnam copyright infringement

Traple, E. 131
Treppoz, E. 417
Triaille, J.-P. 214, 215
Triệu Quốc Manh, 544
Trimble, M. 310
Trumpke, F. 417, 421, 422, 423, 424, 425, 426, 428, 439
Tryggvadottir, R. 215
Tsoutsanis, A. 183

Ueno, T. 176, 227, 228

UK
British Film Institute, digitisation of orphan works 367
British Library licensing scheme 375–6
Copyright Act 43, 47–8, 52–3
Copyright, Designs and Patents Act 82–3

copyright law, historical origins 37, 47, 51–3
extended collective licenses 425–6
originality criterion 82–3
orphan works and cultural and research institutions 368, 369, 382–3
Sound Archive 367
Statute of Anne 45, 46, 47, 51

UK, cases
1967 Ltd v. BSkyB 150
Ashdown v. Telegraph Group 487–8
Biotrading & Financing v. Biohit 82
Donaldson v. Beckett 51
Dramatico 158
EMI v. Sky 158, 195
Hanfstaengl v. Empire Palace 444
Interlego v. Tyco Industries 82
Ladbroke (Football) v. William Hill (Football) 82
Lucasfilm v. Ainsworth 37, 44–5
Newzbin 157–8
Paramount v. BSkyB 145, 150
Polydor Ltd v. Brown 139
PopCorn Time 158
Sawkins v. Hyperion Records 82
Twentieth Century Fox Film Corporation v. Sky UK 150, 157

University of London Press v. University Tutorial Press 82

Walter v. Lane 82

Ulmer, E. 123

umbrella solutions, WIPO Copyright Treaty 136, 137–8, 140–41, 161–2

UNESCO, and contemporary intangible cultural heritage 464, 466–7, 469–70, 477, 482–3, 485

unfair contracts and unconscionability, rules against, ‘Europeanification’ of moral rights 232

universities and public research organizations, works created in, Spain 343–58
articles published by a university-funded researcher 347–8
authorship principle and collected works 345–6
civil servant professors and researchers 347
classroom use limits, reforming 357–8
collective management organization consideration 344
compensation rights 351–2, 357
doctoral studies and open access 356–7
hierarchy or subordination in author’s working relationship 346–7
industrial property rights 345, 349, 353
intellectual property rights 345–6, 349, 350–51, 353–4
Law on Science, Technology and Research (LCT) 343, 345, 349–55
Law on Sustainable Economy (LES) 343, 345, 348–9
Law on Universities (LOU) 343, 353
ownership of copyright in favor of university professors 347–8, 349, 352–3, 354–5
pre-2011 situation 345–8
publication rights 351
research/exploitation rights distinction 348–9, 353–4, 355
rights acquired by third parties 351
University ownership rights 350, 352–3, 355
unprotected content, search engines, works reproduced and published online by 410–11
uplink stations 188
see also broadcasting
US
bright-line rule for music sampling 275, 282
Copyright Act 41
copyright law, historical origins 37–9, 47, 48–9
Copyright Term Extension Act 48–9
Digital Millennium Copyright Act (DMCA) 161
electronic transmission as ‘transfer of ownership’ 165–6
exceptions option, US approach, limited remedies or ‘fair use’ exception, digital cultural heritage assets and orphan works 373–4
extended collective licenses 428–9, 439
fair use doctrine, search engines, works reproduced and published online by 394–407
Lanham Act 445–6
orphan works and cultural and research institutions 360, 361, 362–3, 369, 373–4, 387
US–Vietnam Trade Agreement 513 and WIPO Copyright Treaty see WIPO Copyright Treaty, right of making available, US
US, cases
Aereo 162, 167, 168–9, 171–2
Aimster Copyright Litig. 164
Alticor v. UMG Recordings 162
Arista Records v. Butler 164
Arista Records v. Doe 165
Arista Records v. Greubel 164
Arista Records v. Lime Group 172
Arista Records v. Mp3Board 166
Arista Records v. Myxer 169
Arista Records v. Usenet.com 164, 172
Associated Press v. Meltwater Holding 398–400
Atl. Recording Corp. v. Anderson 165
Atl. Recording Corp. v. Howell 166
Atl. Recording Corp. v. Serrano 164
Authors Guild v. Google 373–4, 377, 400–407, 415, 428–9
Authors Guild v. HathiTrust 373, 429
BMG Rights Mgmt. v. Cox Commc’ns 164, 166
Bridgeport v. Dimension 274, 275, 279–82, 283–5, 289–90
BWP Media USA v. Uropa Media 170
Cablevision 167–8, 173
Call of the Wild Movie v. Does 164
Capitol Records v. Escape Media Group 172
Capitol Records v. MP3tunes 169, 171
Capitol Records v. ReDigi 164
Capitol Records v. Thomas-Rasset 163, 165, 166
Capitol Records v. Vimeo 170
Carriou v. Prince 284–5
Cartoon Network v. CSC Holdings 167
China Central Television v. Create New Technology 169
Corbis Corp. v. Amazon.com 170
Dish Network 168, 169
Diversey v. Schmidly 162
Dymow v. Bolton 280
Eldred v. Ashcroft 37–9, 49, 284
Feist Publications v. Rural Telephone Service Co 58
FilmOn X 168, 169
Fisher v. Dees 280
Fonovisa v. Alvarez 165
Fox Television Stations v. Barry Diller Content Sys. 168
Fung 165, 172
Getty Images v. Microsoft Corp. 171
Gunter 169, 171, 177
Hotaling v. Church of Jesus Christ of Latter-Day Saints 162, 163, 166
Interscope Records v. Duty 165
Interscope Records v. Leadbetter 165
Io Grp. v. Veoh Networks 170
Kelly v. Arriba 395–6
Leevefilm v. Fox Sports Interactive Media 171
Lions Gate Films v. Does 164
London–Sire Records 164–5, 166
MAI Sys. v. Peak Comput. 164
Martha Graham v. Martha Graham Cr. of Contemporary Dance 488
Matal v. Tam 446
Maverick Recording v. Goldshteyn 165
Maverick Recording v. Harper 165
Metro Goldwyn Mayer Studios v. Grokster 172
Milo & Gabby v. Amazon.com 168–9
Motown Record Co. v. DePietro 165
MP3tunes 164, 168
Napster 164, 171
New York Times v. Tasini 164, 401
Newton v. Diamond 280
Perfect 10 v. Amazon.com 162, 168, 170–71, 396–8
Playboy Enters. v. Webworld 170
Soc’y of the Holy Transfiguration Monastery v. Gregory 170
UMG Recording v. Escape Media 172
Universal City Studios v. Bigwood 163, 165
VMG Salsoul v. Madonna Louise Ciccone 275, 276, 280–81, 282, 286–7, 288, 289–90
Warner Bros. Entm’t v. WTV Sys. 169
Warner Bros. Records v. Payne 165
‘use it or lose it’ clause suggestion, remuneration of authors and performer 267–8
user and content provider, relationship between 393–4
see also search engines, works reproduced and published online by ‘user-generated content’ (UGC) effects, ‘Europeanification’ of moral rights 209–10, 215
users’ rights, exceptions as, Canada 13–14
Van Eechoud, M. 94, 178, 206, 207, 217
Van Uytsel, S. 476
Van Velze, S. 94
Vanhees, H. 234–53
Vaver, D. 204
Vermazen, B. 60
Vickery, G. 210
Vietnam, transplantation of copyright law see transplantation of copyright law and Vietnam’s experience
Vietnam copyright infringement 512–38
administrative remedies 534–6, 537 and Berne Convention 518
censorship regulations 514–15
civil remedies 527–33
collective management of copyright 520–21
criminal proceedings 536–7
damage compensation 522, 523, 525, 526, 531–3
economic rights 516–17, 518, 520, 531–2
enforcement mechanisms 521–5
exemptions 516–17
exploitation 519–20
fair and equitable enforcement 529
Finding the Dragon Lady recall 515
foreign copyright owners’ concerns over censorship 514–15
foreign investment focus 512–13
Hoi Dap Thong Minh recall 515
intellectual property law 512–13
intellectual property law, copyright protection under 525–37
intellectual property law, copyrights under 514–21
Internet and digital environment 521–3
journalistic works 519–20
LacViet and Microsoft v. Gold Long John Dong Nai 523–4
licensing 519, 523–4, 525, 532
Microsoft v. Trimmers Vietnam Co. 524
monetary fines and warnings 534–6, 537
moral rights 516, 518, 532–3
musicians and artists 520–21
protection term 518
provisional, urgent measures 529–31
public rectification and apology 533
remedial measures 535
reproduction rights 520–21
rights granted in copyright 515–17
royalties and remuneration 517, 518–20
sanction of the confiscation of pirated goods and means of production 535–6
self-protection measures 526–7
software piracy 523–5
State policies on copyright 514–15
termination of acts of infringement and cease-and-desist letter 526–7
US–Vietnam Trade Agreement 513
Vimeux, F. 514, 541
virtual property rights, digital cultural heritage assets and orphan works 387
visual arts, mandatory collective management 431–2, 439–40
see also collective management and exclusive rights
Vitorino, A. 322, 325
Vivant, M. 205, 227, 229
volitional conduit requirement, US 168–9
voluntary licensing, digital cultural heritage assets and orphan works 376–7
voluntary nature of technological protection measures, and private copying, EU 333
Von Hein, J. 559, 560, 562, 565
VPN-connection to hide IP address 310, 315
see also online and streaming services, EU
Vu Manh Chu 541
Vũ Quốc Thơng 544
Vuopala, A. 368, 369
Vutulani, A. 364

Waelde, C. 463–92
waivability, ‘Europeanification’ of moral rights 230–32
Walter, A. 276
Walter, M. 125–6, 127
Wandtke, A.-A. 214
Watson, A. 539, 540

websites
accessibility (based on server elsewhere), EU private international law 563–4
embedded linking, EU 107
hyperlinks, EU 107–8, 119
intervention enabling direct link between websites hosting unauthorised works, WIPO
Copyright Treaty 159–60
see also computer programs; Internet
Wendland, W. 476, 480
Westkamp, G. 149–50, 158, 161
White, B. 376, 389

WIPO Copyright Treaty
Beijing Treaty on Audiovisual Performances 202
and contemporary intangible cultural heritage 466, 468–9, 483, 484
and ‘Europeanification’ of moral rights, invitation for 201–2
Performances and Phonograms Treaty 139–40, 202
protection of expression rather than idea 79–80
right of communication to the public 87, 103
Rome Convention, and European morality/public policy exclusion 448
sui generis right 72

WIPO Copyright Treaty, right of making available 135–77
Australia 172–4
and Berne Convention 135, 137–8
Canada 174
China 174–5
exceptions 141, 144, 162
exclusive rights 138–40, 141, 161–2, 163, 166–7, 170
exploitation 149–50
infringements 144, 157, 162, 169, 171–2, 174
Japan 175–6
umbrella solutions 136, 137–8, 140–41, 161–2

WIPO Copyright Treaty, right of making available, EU and Copyright Directive (2001/29) 142–60
complementary criteria which are not autonomous and are interdependent 150–53
cumulative effect of making the works available to potential recipients 147–8
freedom of expression on the internet 154
intervention enabling a direct link to be established between websites hosting unauthorised works 159–60
linking and framing on the internet 148–50
linking to unauthorised content constitutes communication to the public 153–9
and ‘new public’ test 145, 149–50, 155–6

WIPO Copyright Treaty, right of making available, US 161–72
distribution right 163–6
electronic transmission as ‘transfer of ownership’ 165–6
public display 170–72
public performance right 162–3, 166–70
server test 170–72
stream is ‘offered’ before an actual transmission takes place 169
volitional conduit requirement 168–9
withdrawal right, ‘Europeanification’ of moral rights 228
Wittem Code, and ‘Europeanification’ of moral rights 222, 224–5
Woodmansee, M. 484
World Conference of Cultural Policies, Mondiacult report 466
World Heritage Convention 464–5
WTO TRIPS

computer programs 76
protection of expression rather than idea 79–80
sui generis right 72
Wunsch-Vincent, S. 210
Xalabarder, R. 213, 423
Yliniva-Hoffmann, A. 150
Zemer, L. 230
Zografos, D. 364