

Index

- Aboriginal Artists Agency, 110
 aesthetic neutrality, 16, 42, 50–53, 60
 aesthetic values, 118, 235, 242–243, 246–247, 271
 Alvarez group, 146, 203
 Arts Law Centre of Australia, 108, 125
 ATLAS collaboration, 147
 attribution practice, 91, 102–104, 137, 162, 163, 211
 Australian Indigenous art (legal protection)
 authorship dynamics, 102–108
 Bulum Bulum v R & T Textiles, 101, 109, 112–122
 case law examples, 101, 109, 110–122
 certainty and social norms, 243
 collective/certification trademarks, 124–125
 contracts and, 125–126, 249
 copyright protection/subsistence in, 109–122
 creative realities of authorship, 102–104, 210
 cultural context, 105–108
 cultural identity, 102–104
 Dreamtime and, 103, 102–103
 insights for copyright law, 127–130
 introduction to, 100–101
 limited legacy of *Bulum Bulum v R & T Textiles*, 115–121
 meaning of authorship in, 205, 207, 208
 other (non-copyright) solutions for protection, 122–127
 private ordering and, 215, 220
 protocols and codes of conduct, 123–124
 sharing economy of, 210–211
 sui generis legislation, 123, 126–127
 auteur theory, 167–168, 203
 authorial credit (attribution), 49, 91, 102–104, 137, 162, 163, 211
 authorial freedom, 74, 202
 authorship
 authoritative pronouncement on, 225
 case law on, 9, 17–29
 characteristics of, 19
 coercion authorship, 140
 conceptual understanding of, 51–52, 59–63, 67–70
 copyright law *vs.*, 16, 212, 272
 copyright law's assumptions about, 11, 48, 54–55, 62–63, 68, 238
 cultural conceptions, 67–70
 defined, 17–29, 269
 determination in digital creations, 88
 different meanings of, 11, 68, 205–206, 229
 dynamics in Australian Indigenous art, 102–108
 dynamics in film collaborations, 161–169
 dynamics in science, 132–139
 dynamics in Wikipedia, 73–77
 fragmentation of, 137, 190
 ghost authorship, 140, 149, 216, 227
 gift authorship, 140, 150, 256
 guest authorship, 140, 150, 256
 of Indigenous art, 103–104
 individual authorship, 39–40, 60, 104
 introduction to, 15–16
 meaning in collective authorship, 203, 204–210
 normative dimension of, 20, 25–26, 53–58
 post-modern concept of, 61
 power relations in, 143, 245
 ‘romantic author’ notion, 50, 59–62, 70–71, 118, 135, 155, 161, 168, 199, 203, 269–270
 social conceptions/norms of authorship, 67–70, 89, 205–206
 standard for joint *vs.* individual, 39–40, 60
 statutory presumptions on, 223
 summary of, 70–71
 theories on, 4–5, 58–70
 authorship norms, 137, 204–210

- authorship standards, 224
 autonomy
 of authors, 155, 161, 202
 in basic research, 136
 contract law and, 249
 film elements and, 171–172
 private ordering and, 216
 of Wikipedia contributors, 202
- Bangarra Dance troupe, 125
 bargaining power, 225, 241, 254
 Barron, Anne, 231
 Berne Convention, 18, 23, 181
 Biagioli, Mario, 139
 biomedical science collaborations,
 139–145. *See also* scientific
 collaborations
 Boyle, Robert, 135–136
- case law on authorship, 9, 17–29
 CERN collaborations, 136, 145–147
 certainty of social norms, 243–244, 251
 certification trademarks, 124–125
 cinematographic works, 160
 classic studio system in Hollywood, 192
 codes of conduct, 123–124
 coercion authorship, 140
 collaboration. *See also* film collaborations;
 scientific collaborations
 ATLAS collaboration, 147
 biomedical collaborations, 237
 Collider Detector at Fermilab (CDF)
 Collaboration, 146
 in film, 182
 hydrogen bubble chamber collabora-
 tion, 146
 in joint authorship test, 31–34, 49, 57,
 235, 251
 large-scale collaboration, 1, 2, 145
 NASA collaborations, 136
 particle physics collaborations, 145–147,
 157–158
 requirement in film, 182
 social norms and, 253
 Wikipedia, 87–88
 collaborative creativity, 2, 12, 44, 50, 67
 collection of independent works, 84–85
 collective action, 199, 215, 260
 collective authorship
 copyright law and, 61, 201, 224–229
 creative process in, 201–204, 234, 246
 creative realities and, 210–212
 defined, 2, 201
 differing meanings of authorship,
 205–206
 joint authorship and, 63–67
 joint authorship test and, 34, 250–256
 meaning of authorship in, 203, 204–210
 nature of, 10–11, 58, 201–204
 power dynamics of, 209–210
 private ordering and, 213–224
 responsibility for the work, 206–208
 social norms, 201, 204, 229
 status within particular communities,
 208–209
 summary of, 229–230
 collective bargaining, 196, 220
 collective trademarks, 124–125
 collectivisation of modern science, 132
 Collider Detector at Fermilab (CDF)
 Collaboration, 146
 colonialisation, 107
 common design, 31–34, 47, 182, 251
 common law, 119, 241
 communal title, 116
 communalism, 133
 community norms of authorship, 153
 community values and authorship,
 205–206, 208–209
 consensus-based processes, 74, 155
 contextual approach to joint authorship, 12,
 97, 232, 250–256, 270
contra proferentum rule in contract law, 220
 contract law, 193, 220, 249
 contracts
 Australian Indigenous art, 114,
 125–126, 249
 film collaborations, 198, 249–250
 hard contracts, 195
 joint authorship test, 249–250
 objective construction, 261
 soft contracts, 195–196, 215
 time-limited option contracts, 196
 contribution as ‘not distinct,’ 30, 69, 149,
 183, 232
 control in authorship, 66. *See also* creative
 control
 Coombe, Rosemary, 69, 224
 copyleft licences, 89, 90–95, 213–214, 217,
 218, 222, 226
 Copyright, Designs and Patents Act 1988
 (CDPA)
 author/non-author approach to attribu-
 tion, 223
 concept of authorship in, 17–29
 default authorship standard, 217, 218,
 221, 266
 dramatic works, 160, 180–187
 entrepreneurial work, 27, 170–171,
 176

296 Index

- film collaborations, 159, 169, 170, 174–175, 186
- introduction to, 9, 14
- joint authorship test, 29–42, 247–248, 251
- joint owner rights, 257–262
- meaning of authorship, 17–29, 208
- originality test, 21, 22–25, 60, 80, 83
- presumptive employer ownership of copyright, 179
- scientific journal article a literary work, 148
- Copyright Act (1911), 100, 170, 185
- Copyright Act (1956), 27, 30–31, 100, 170, 171, 180, 183
- Copyright Act (1968) (Cth), 100, 111, 113, 117, 119
- copyright infringement, 95–96
- copyright law. *See also* Australian Indigenous art; Copyright, Designs and Patents Act 1988
 - assumptions about authorship, 11, 48, 54–55, 62–63, 68, 238
 - collective authorship and, 61, 201, 224–229
 - concept of authorship, 16, 17–29, 212, 272
 - concepts of subsistence, 59–60, 116, 120
 - creative reality and, 11
 - default entitlement under, 193–194
 - dramatic works, 160, 180–187
 - evidence-based policy making, 6–8
 - fairness of, 236–237, 268
 - film collaborations and, 165, 196–200, 209
 - internationalisation of, 3
 - introduction to, 1–6
 - non-compliance with, 3
 - normative goals, 8, 21, 23, 256–257
 - predominant justification for, 21
 - private ordering and, 216
 - role of, 11, 28, 52
 - scientific collaborations, 148–158
 - as a source of standards, 98, 217, 218, 221, 266
 - subsistence of copyright in film, 169–192
 - Wikipedia insights for, 95–99
- copyright scholarship, 58–70
- copyright subsistence, 59–60, 78–90, 109–122, 148–154, 169–192
- copyright trust, 264–265
- corporate authorship, 39–40, 60
- cost-free incentives, 138
- costumes and copyright, 173–174
- Court of Justice of the European Union (CJEU), 8, 17, 19
- create, defined, 19
- Creative Commons Attribution-Sharealike 3.0 Unported Licence (CC-BY-SA), 91
- creative commons licenses, 4, 91, 92, 214, 248
- creative control, 56, 177, 188, 202, 206, 209, 234, 248
- creative investment in films, 162
- creative practices, 16, 26, 62, 212, 231, 251, 270
- creative process
 - in collective authorship, 201–204, 234, 246
 - creative product *vs.*, 74, 206
 - iterative creative process, 79–80, 82
 - joint authorship test and, 229
 - meaning of authorship and, 206
 - private ordering and, 223
- creative realities
 - biomedical collaborations, 237
 - collective authorship and, 210–212
 - film collaborations, 210, 240
 - joint authorship test and, 252
 - scientific collaborations, 210, 255
 - social norms and, 239
- creative reality, 6, 11, 98, 210, 213–224
- creator protection in films, 197–198
- credibility of copyright law, 231, 235–236
- credit in collective authorship, 211
- credit value in scientific authorship, 138, 140
- cultural conceptions of authorship, 67–70
- cultural custodianship, 127
- cultural identity in Australian Indigenous art, 102–104, 129
- cultural self-determination, 129
- database, defined, 84–85
- default entitlement under copyright law, 193–194
- digital environment, 72–73
- directed commercial research, 136
- director authorship credit, 163, 191
- disinterestedness, 133, 151, 210, 222, 227
- distinct contribution, 30, 69, 149, 183, 252
- dominant author, 16, 64, 66, 131, 156, 191, 265, 269
- dramatic significance and copyright, 185
- dramatic works, 160, 180–187
- Dreamtime in Australian Indigenous art, 102–103, 111
- economic-incentive based view of copyright, 210, 211–212

- economic rights of authors, 21, 155, 158, 178
 Edison, Thomas, 165
 employer ownership of copyright, 179
Encyclopaedia Britannica, 73–74
 End-User Licensing Agreements, 95
 estoppel, 46
 European Commission, 193
 European harmonisation, 27, 256
 express agreement of contractual nature, 114
- factual dimensions of joint authorship test, 53–58
 factual specificity, 43, 246
 fairness of copyright law, 236–237, 268
 false attribution of scientific authorship, 151
 Federal Court of Australia, 109, 112, 228
 fiduciary duty, 114–115, 128, 264–265
 film collaborations
 authorship dynamics, 161–169
 contracts and, 192–196, 249–250
 copyright complexity within, 171–176
 copyright law and, 165, 196–200, 209
 costumes and copyright, 173–174
 creative realities of authorship, 210, 240
 editing of film and copyright, 186
 film as dramatic work, 180–187
 film as first fixation, 176–180
 historical note, 170–171
 introduction to, 159–160
 meaning of authorship, 206
 pragmatic reasoning and, 187–192
 principal director, 177
 private ordering and, 192–196, 199, 215, 220
 producer, 177
 props and copyright, 173–174
 subsistence of copyright, 169–192
 film copyright term, 179–180
 film credits, 161, 162, 194, 196–197
 financial investment in films, 162
 fragmentation of authorship, 137, 190
 fraudulent authorship, 141
 free culture of sharing, 93, 94
 Free/Libre/Open Source Software movement, 90
 Free Software Foundation's General Public Licence, 90–91
 Free Software movement, 4
 freelance documentaries, 178
 French New Wave, 167
- Ganalbingu people, 112–113
 ghost authorship, 140, 149, 216, 227
 gift authorship, 140, 150, 256
 gift economy, 134–135, 210–211
 Ginsburg, Jane, 4, 58, 62–63
 GNU Free Documentation Licence (GFDL), 91
 Goldstein, Paul, 63–67
 Gregory Report, 170–171, 198
 group management of jointly owned copyright, 257
 guest authorship, 140, 150, 256
- 'hands-on' control over contributors, 202
 hard contracts, 195
 Hargreaves, Ian, 6
 Hitchcock, Alfred, 166
 hold-ups, 12, 45, 179, 183, 261–262, 268
 Human Genome Project, 136
 hydrogen bubble chamber collaboration, 146
- idea/expression dichotomy, 41, 60, 97, 119, 148, 254
 imaginative film components and copyright, 174–175
 implied licenses, 183, 189, 261–262
 incentive story of copyright protection, 13, 21, 211–212
 inclusive approach to joint authorship, 11–12, 98, 150, 168–169, 232, 250–256, 270
 independent legal standards, 239
 Indigenous Australian Art Commercial Code of Conduct, 123–124
 Indigenous cultural expressions. *See* Australian Indigenous art
 Indigenous customary law, 102–104, 119
 Indigenous Label of Authenticity, 124
 individual authorship, 39–40, 60, 104
 InfoSoc Directive, 22
 innovator, 19–20
 intellectual creation
 CDPA and, 28
 originality standard of, 29
 relevance to joint authorship test, 38
 test of, 17, 18, 22–25, 26–27
 Wikipedia as, 78
 intellectual property rights
 certainty disputes, 244
 importance of, 2
 Indigenous cultural expressions *vs.*, 106
 ownership by studios and production companies, 164
 standards, 227
 sui generis legislation, 123, 126–127

298 Index

- International Committee of Medical Journal Editors (ICMJE), 141, 142–143, 154, 155, 237
- international copyright law, 18, 181
- internationalisation of copyright law, 3
- interpretation, 184–185
- iterative nature of the creative process, 79–80, 82
- joint authorship
- concept of authorship, 17–29
 - contextual approach to joint authorship, 12, 97, 232, 270
 - copyright case law on, 2, 3, 29–42
 - defined, 29
 - inclusive approach to joint authorship, 11–12, 98, 150, 168–169, 232, 270
 - introduction to, 15–16
 - Nimmer v Goldstein approach, 63–67
- joint authorship test
- aesthetic neutrality, 16, 42, 50–53, 60, 246–247
 - aesthetic values in, 118, 235, 242–243, 246–247, 271
 - analytical clarity and, 15, 42–53
 - application characteristics, 118
 - application to collective authorship, 201
 - CDPA concept of, 29–42
 - collaboration in, 31–34, 49, 57, 235
 - common design in, 31–34, 49, 57
 - contextual approach to, 250–256
 - contribution as ‘not distinct,’ 30, 69, 149, 183, 252
 - court’s failure to apply, 117
 - critique of, 42–53, 246–250
 - dangers of deferring to social norms, 238–241
 - factual and normative dimensions of, 53–58
 - factual specificity, 43, 246
 - film collaborations, 160
 - framework for considering social norms, 241
 - inclusive approach to, 250–256
 - introduction to, 9, 10, 231–233
 - joint ownership and, 46, 256–268
 - judicial characterisation of the contributions, 156
 - pragmatic instrumental approach, 9, 43–50, 67, 70–71, 231, 247–250
 - proof of intention, 33–34
 - reasonableness requirement in, 268
 - relevance of social norms, 232, 233–238
 - revising critique of, 246–250
 - right kind requirement, 13, 184
 - in scientific collaborations, 143–145, 158
 - significant contribution of the right kind, 35–42, 184
 - social norms, 232, 233–238, 250–256, 270–271
- joint labouring in furtherance of a common design, 87–88
- joint ownership, 46, 256–268
- joint tenants, 258, 264–265
- judicial reluctance to award protection, 60
- laches, 46
- large-scale collaboration, 1, 2, 145
- Law Dictionary*, 54
- legal millefeuilles/scope of the work, 84, 175–176
- legal protection of Australian Indigenous art, background, 105–108
- legislative reform, 6, 266–268
- legitimacy of copyright law, 5–6, 237–238
- liberty and private ordering, 216, 219
- Litman, Jessica, 237
- Malangi, David, 110
- Malcolm X* (film), 187–189
- market economy, 134–135, 150, 153
- meaningful or significant contribution, 56–57
- mechanical copyright, 176
- Merton, Robert, 132–133, 206
- misappropriation, 25, 80
- moral rights of authors, 18, 49, 60, 155, 158, 179–180, 211
- mutual support authorship, 140
- NASA collaborations, 136
- National Indigenous Arts Advocacy Association (NIAAA), 124
- Neutral Point of View policy, Wikipedia, 74, 75, 253
- Nimmer, Melville, 63–67
- non-compliance with copyright law, 3
- non-dominant authors, 16
- non-economic benefits of authorship, 154
- non-economic consequences of authorship, 154, 160, 272
- non-exclusive licence, 44, 64, 262
- non-profit community project, 73–77
- normative dimension of authorship, 20, 25–26
- normative dimension of copyright law, 23, 256–257
- normative dimension of joint authorship test, 53–58

- objective construction of
 - a contract, 261
- objective determination of a question of fact, 54, 57, 88, 118, 252
- Ong, Burton, 117
- organised scepticism, 133
- originality test, 21, 22–25, 60, 80, 83
- originator/source and authorship, 19–20
- Our Culture: Our Future* report, 124

- particle physics collaborations, 145–147, 157–158. *See also* scientific collaborations
- performance, 184–185
- pharmaceutical industry authors, 141, 142–143, 144
- policy implications of social norms, 245–246, 251
- Posner, Eric, 222
- possessory credits, 163, 197
- post-modern concept of authorship, 61
- power dynamics of collective authorship, 209–210
- power relations in authorship, 143, 245
- pragmatic instrumental approach
 - dominant author, 9, 156
 - film copyright, 187–192, 199
 - joint authorship test, 9, 43–50, 67, 70–71, 231, 247–250
- pre-existing clan-owned designs, 110–111
- presumptive employer ownership of copyright, 179
- principal director, 177
- private ordering
 - benefits and limitations of, 216–224
 - collective authorship and, 213–224, 229
 - copyright law and, 98
 - film collaborations, 192–196, 199
 - joint ownership and, 260
 - less successful examples of, 215–216
 - scientific authorship, 139–147
 - successful examples of, 213–215
- producer in film collaborations, 177
- proof of intention, joint authorship, 33–34
- proof-reading and copyright authorship, 185
- property law, 257–258, 264–265
- props and copyright, 173–174
- protocols for dealing with Australian Indigenous cultural expressions, 123–124

- raw footage in film making, 191
- reasonableness requirement in joint authorship test, 268

- representativeness consideration of social norms, 244–245, 251
- Reserve Bank of Australia, 110
- responsibility in scientific authorship, 138
- restrictions of number of authors, 46
- revenue-sharing, 45
- romantic author, 50, 59–62, 70–71, 118, 135, 155, 161, 168, 199, 203, 269–270
- Rothman, Jennifer, 240

- Sarris, Andrew, 168
- science values and openness, 227
- scientific collaborations
 - application of copyright law, 148–154
 - authorial responsibility and credit, 138
 - biomedical science, 139–145
 - creative realities of authorship, 210, 255
 - dynamics of authorship in, 132–139
 - insights for copyright law, 154–158
 - introduction to, 131–132
 - joint authorship test, 143–145, 148–154, 158
 - meaning of authorship, 205–206, 207–208
 - particle physics, 145–147
 - private ordering and, 214, 216, 217, 218, 222
 - regulating with private ordering, 139–147
 - sharing economy of, 210–211
- screen credits. *See* film credits
- Screen Writers Guild, 167
- self-determination, 216, 219, 249
- self-government of credit, 195
- self-management rules, 266
- self-regulated creativity on Wikipedia, 97
- sense of community on Wikipedia, 76, 77
- Seymore, Sean, 139, 143–145, 227
- share-alike provisions, 93
- sharing of responsibility in collective authorship, 201
- significant contribution of the right kind, 35–42, 46–47, 56, 69, 87, 184
- social conceptions/norms of authorship, 67–70, 89
- social norms
 - certainty consideration, 243–244, 251
 - in collective authorship, 201, 204, 229
 - dangers of deferring to, 238–241
 - framework for considering, 246
 - joint authorship test, 232, 233–238, 250–256, 270–271
 - policy implications, 245–246, 251
 - private ordering and, 219, 224
 - representativeness consideration, 244–245, 251

300 Index

- soft contracts, 195–196, 215
- Standard Author List, 146
- Stanford Linear Detector (SLD)
 - Collaboration, 146–147
- star power in films, 166
- statutory presumptions on authorship, 223
- statutory ‘trust of land’, 264–265
- studio structure, 163
- subsistence in copyright law, 17–29, 95
- sui generis legislation, 123, 126–127
- suitable, defined, 8
- Sunstein, Cass, 76
- sweat of the brow, 22–25

- tenants in common, 44, 90, 178, 257–258
- three-dimensional objects and copy-
right, 175
- time-limited option contracts, 196
- top-down norms, 234, 245
- traditional cultural expressions. *See*
 - Australian Indigenous art
- trivial contributions, 35, 98, 148
- Truffaut, François, 167
- Trust of Land, 264–265

- ultimate arbiter factor, 40, 48
- under-inclusive approach to joint author-
ship, 150
- unfair competition, 22, 25

- universalism, 133
- unsigned deals, 196
- US Copyright Act (1976), 33–34
- US joint ownership, 262–265

- valuable contribution, 56
- ‘Village Pump’ section of Wikipedia, 75

- Web 2.0 technology, 72–73
- Wikipedia
 - authorship dynamics in, 73–77
 - autonomy of contributors, 202
 - content on, 1
 - contributors as copyright authors, 86–90
 - copyleft licences, 89, 90–95, 214, 218,
222, 226
 - copyright subsistence on, 78–90
 - creative commons licenses, 90–95, 248
 - creative realities of authorship, 210
 - as database, 84–85
 - division of labor, 202
 - insights for copyright law, 95–99
 - introduction to, 72–73
 - meaning of authorship in, 205, 206–207
 - Neutral Point of View policy, 74,
75, 253
 - originality test, 78–86
 - sharing economy of, 210–211
- Writers Guild of America (WGA), 194, 197