

Index

- Absolute territorial exclusivity, 78, 83, 86, 95, 100–105, 107, 109, 110, 112, 232;
see also *Consten Grundig* decision
- Abuse of dominant position. *See* Competition law
- Access. *See* Cross-border access
- Active sales, 106, 207, 227
- Additional obligations rationale, 108, 111, 113, 115, 119, 226, 252
- Aggregation of repertoire, 37
- AllPosters* decision, 115
- Amazon, 182
- Apple, 6, 95, 182–183; *see also* iTunes investigation
- Armonia, 59
- Article 167(4) TFEU. *See* Cultural diversity
- Audiovisual Media Services Directive, 6, 40, 177, 216, 248
- Audiovisual works, 7, 8
 Relationship to musical works, 8
- Berne Convention, 28, 30, 31, 245
- Better Regulation. *See* European Commission
- Blanket licensing, 43, 49, 53, 76
- Block Exemption Regulation, 77, 80, 115
- Books. *See* E-books
- Bundling. *See* Price discrimination
- Business models, 3, 9, 37–41
 Free advertising-based models, 40
 Revenues, 41
 Subscription-based models, 40
- Capacity to process multi-territorial licences, 152
- Charter of Fundamental Rights of the EU, 30
- CISAC, 54
- CISAC cases, 86–94, 119, 223–235
CISAC v. Commission decision, 90–94
GEMA, see GEMA v. Commission decision
- STIM, *see STIM v. Commission decision*
- Classic community method. *See* New governance
- CMO. *See* Collective management organisations
- Coditel I* decision, 78, 100, 107
- Coditel II* decision, 32, 105, 118, 119, 251
- Collecting societies. *See* Collective management organisations
- Collective management organisations
 Competition law, 76
 Cultural diversity, 52, 162
 Definition, 7, 137
 Economic efficiency argumentation, 223
 Economics, 47
 Exclusive representation, 87
 Features, 43–45
 History, 42
 Market failure, 47, 234
 Membership clauses, 87
 Natural monopoly, 44, 45, 76, 80, 234
 Path dependency, 53
 Re-aggregation of rights, 225
 Scope, 137
 Solidarity, 42, 47
 Transaction costs, 47, 48, 51, 160
- Commercial user, 39
- Commission. *See* European Commission
- Common market. *See* Internal market
- Competition
 Price competition, 47
 For rights holders, 126, 165, 224, 228
- Competition law, 75–120, 231, 234, 243
 Article 101 TFEU, 75, 80
 Article 102 TFEU, 75
 CISAC cases, *see* CISAC cases
 Horizontal licensing agreements, 223
 Licensing agreements, 77
 Quasi-regulatory intervention, 234, 235
 Relationship to free movement, 98–99, 102
- Compulsory licensing, 78
- Conditions for representation, 153

- Conferral, principle of. *See* Legislative competence
- Consten Grundig* decision, 78
- Consumer, 7, 32, 250
- Consumer demand, 12, 32
- Contractual freedom, 17, 29–30, 35, 250
- Copyright
- Consultation on, 12–13, 23
 - Economics of, 17
 - Exercise of, 10
 - Specific subject matter, 99, 104–105
 - Split, 37, 61
 - Substantive norms, 10, 180, 232
- Copyright collectives. *See* Collective management organisations
- Copyright Directives, 11
- Copyright law, 10, 12, 15, 28
- Modernisation of, 15
- Copyright licensing. *See* Licensing and Licensing of intellectual property rights
- Country of destination, 124
- Country of origin, 13, 247–249, 253
- Berne Convention, 30
 - Coditel I*, 100–101
 - Cross-border Portability Regulation, 191, 200, 216, 226
 - Concept, 30
 - CRM Directive, 150–151, 167
 - Identification, 66
 - Premier League and Murphy*, 106–107, 115
 - Proposal for a Regulation on Online Transmissions of Broadcasting Organisations, 214–215, 227
 - SatCab Directive, 178, 210–212
- Country of transmission, 247
- Creative Europe, 73
- CRM Directive. *See* Directive 2014/26/EU
- Cross-border access, 5, 33, 35, 221, 226
- Consumer demand, 2
 - Relationship to multi-territorial licensing, 8, 32–37
 - ‘True’, 33–34, 216, 220–221, 226, 232
- Cross-border accessibility, 14, 33, 226, 232
- Non-legal motives, 9, 250
- Cross-border licensing, 32
- Cross-border portability. *See* Portability
- Cross-border Portability Regulation. *See* Regulation (EU) 2018/302
- Cultural diversity, 2, 48, 251
- CISAC decision, 88–89
- Collective management, 52–53, 129–131, 136, 160
- CRM Directive, 162–165
- Film financing, 68
- STIM v. Commission*, 91, 93
- Cultural heritage institutions, 7, 171
- Customer allocation, 83, 85, 125, 151, 169, 223
- Daft Punk* decision, 77, 225
- Deadweight loss, 45, 49
- Deezer, 181, 183
- Denmark, 38, 91, 136, 139, 140, 144, 175
- Deutsche Grammophon* decision, 31, 251
- DG CONNECT, 15, 238, 239
- DG MARKT, 15, 134, 238
- Digital Single Market, 10, 12, 37
- Development of, 11–16
 - Digital Agenda, 134
 - Digital Single Market Strategy, 201
 - Digital Single Market Strategy for Europe*, 13
 - Proposal for Directive on Copyright in, 170–172
- Direct licensing
- Audiovisual works, 62, 77
 - Collective management, 52, 92
 - CRM Directive, 140, 149–150, 157, 225, 228–229
 - Musical works, 57, 60–61, 92, 228–229
 - Online Music Recommendation, 127
- Directive (EU) 2015/1535. *See* Technical Standards Directive
- Directive 2001/29/EC. *See* InfoSoc Directive
- Directive 2010/13/EU. *See* Audiovisual Media Services Directive
- Directive 2012/28/EU. *See* Orphan Works Directive
- Directive 2014/26/EU, 132, 133, 162–164, 225, 229, 234
- Cultural diversity, 160, 164, 165, 175
 - Definitions, 9
 - European licensing passport, 152, 154
 - Governance and transparency, 148
 - Impact assessment, 169
 - Licensing for non-commercial purposes, 147
 - Option 3 publishers, 141
 - Policy options, 149
 - Scope of, 144, 161
 - Tag-on obligations and tag-on opportunities, 153
- Discotheque cases. *See* *Lucazeau and Tournier* decision
- Downloads, 6, 95
- E-books, 3, 72, 161, 187, 206–207
- Economic residence clause, 83, 85

280 Index

- Enforcement, 10, 15
 Equal treatment, 127, 159, 168
 European Commission, 15, 236
 Better Regulation, 17, 23, 69, 132, 178, 237
 Better Regulation Guidelines, 23
 Digital agenda, *see* Digital Single Market
 Governance models, 20
 Intra-institutional interplay, 237, 255
 Structure, 15–16
 European Court of Justice, 240–242
 European Parliament, 2, 3, 68, 89, 130, 134, 186, 202, 216, 236, 246
 Committee of Industry, Research and Energy, 23
 Committee on Culture and Education, 198, 199
 Committee on International Trade, 161
 Committee on Legal Affairs, 31, 142, 188, 195, 197, 199, 249
 Committee on Legal Affairs and the Internal Market, 123
 Committee on the Internal Market and Consumer Protection, 198
 European Economic and Social Committee, 161
Ex ante regulation, 25, 218, 222, 224, 230; *see also* Chapters 4 and 5
Ex post regulation, 25, 218, 222, 224, 230; *see also* Chapter 3
 Exclusivity, 28–29, 64, 157
 Exhaustion, 10, 113–115, 240, 241, 251, 256
 Exploitation windows, 9, 63
 Extended collective licensing, 149, 150, 172

 Financing, 14
 Of film works, 32
 First-sale doctrine, 38
 Free movement, 11, 33; *see also* Internal market
 Freedom of contract, *see* Contractual freedom
 Fundamental freedoms, 10

 Games, 149, 187, 207
GEMA I decision, 76, 77, 87, 89
GEMA v. Commission decision, 91
 Geo-blocking, 3, 13, 33, 65
 Concept, 8, 33
 Empirical evidence, 66
 Geo-blocking Regulation, *see* Regulation (EU) 2018/302
 Geo-filtering, 65
 Geo-filtering, 65, *see also* Geo-blocking
 Germany, 46, 60, 91, 111, 113, 128, 137, 139, 140, 142, 144, 170, 195
Germany v. Parliament and Council decision, 122
 Global Repertoire Database, 69
 Google. *See* YouTube
 Governance. *See* New governance
 Gradual approach, 14
 Guidelines on technology transfer agreements, 75
 Guidelines on vertical restraints, 75
GVL v. Commission decision, 76, 77, 87, 89

 Harmonisation, 14
 HBO Nordic, 181–182
 Horizontal aggregation of functions, 225
 Horizontal agreements, 77, 78; *see also* Licensor–licensor relationship
 Horizontal licensing arrangements, 223

 IME. *See* Independent management entities
 Impact assessment, 64, 85, 169
 Independent management entities, 138–140
 Individual rights management, 47
 Industry-led solutions, 12
 InfoSoc Directive, 10, 12, 31, 114, 123, 179, 211, 246, 249
 Innovative online services, 146
 Intellectual property rights, *see* Licensing of intellectual property rights
 Interactive on-demand services, 6, 39–40
 Internal market, 1, 33, 118, *see* *Digital Single Market*
 History of, 11–12
 Notion of, 11
 International Copyright Enterprise, 70
 Italy, 45
 iTunes investigation, 95

KODA v. Commission decision, 91

 Lag om kollektiv rättighetsförvaltning på upphovsrättsområdet, 137–139
Lagardère decision, 31
 Legislative competence, 121, 122
 Liability rules, 44
 Licenses for Europe, 12, 72, 227
 Licensing, 9, 29
 Of audiovisual content, 63, 73
 Of intellectual property rights, *see* Licensing of intellectual property rights
 Of musical works, 42
 Licensing costs. *See* Transaction costs

- Licensing of intellectual property rights, 16, 29
 Specific subject matter, *see* Copyright
- Licensor–licensee relationship, 77
- Licensor–licensor relationship, 77, 223
- Linear services, 6, 39
- Lisbon Treaty, 11
- Lov om kollektiv forvaltning af ophavsret, 137, 139
- Lucazeau* decision, 50, 78, 80, 87, 223, 224
- Maastricht Treaty on European Union, 11
- Market power, 47
- Max Planck Institute, 128, 129, 160, 166, 169
- Membership clauses, 86
- Minimum harmonisation, 136
- Model contracts, 78, 235
 Barcelona agreement, 81, 85, 223
 CISAC cases, 86–94
 Santiago agreement, 81, 85, 223
 Simulcasting agreement, 83, 223
 Sydney agreement, 81
- Monopoly
 Collective management organisations, 44–46, 71, 156, 173
 Competition law, 75–76, 80; *see also* CISAC Cases
 CRM Directive, 151, 157, 163, 166–167, 173
 Online Music Recommendation, 126
- Mono-territorial licensing, 37, 61, 84, 155, 169
- Mono-territorial multi-repertoire licensing, 173
- Multi-territorial licensing, 32, 35, 121, 221, 222, 225
 Definition, 9, 33
 Relationship to cross-border access, 8, 32–37
- Multi-territorial mono-repertoire licensing, 173, 228
- Murphy (Karen). *See* *Premier League and Murphy*
- Music Choice Europe. *See* CISAC cases
- Musical works, 7, 8
 Relationship to audiovisual works, 8
- Negotiation mechanisms, 14, 171
- Netflix, 6, 64–65, 180–184
- New Chicago School, 19
- New governance, 16, 20, 24, 237
- News programmes, 67, 178, 215
- Non-discrimination, 46, 77, 153, 178, 201, 207
- Non-linear services. *See* Streaming
- Nordic Council, 210
- Nordic countries, 71, 182, 210
- Oligopolies, 89, 129, 225
- On-demand services, 39
- One-stop shop, 58, 82, 84
- Online content services, 4
 Definition, 39
- Online Music Recommendation. *See* Recommendation 2005/737/EC
- Online music service, 39
- Online streaming. *See* Streaming
- Operational arrangements, 225
- Option 3 publishers, 57, 141, 228; *see also* Recommendation 2005/737/EC
- Orphan Works Directive, 10
- OSA* decision, 55, 107
- Out-of-commerce works, 14, 171
- Pan-European licensing. *See* Multi-territorial licensing
- Parallel direct licensing, 150
- Paramount, 233; *see also* Pay-TV investigation
- Party autonomy. *See* Contractual freedom
- Passive sales, 222, 226, 252
 Definition, 106
 Geo-blocking Regulation, 207–208
 Pay-TV investigation, 110, 112–113, 117
Premier League and Murphy, 115, 119, 226
- SatCab Directive, 211–212
- Terms of services, 183
- Pay-TV investigation, 109–117, 226, 229, 232
- Physical copies, 6, 114
- Piracy, 9, 15, 114
- Policy instruments. *See* Regulation
- Portability, 13, 33, 221, 222, 226
- Portability Regulation. *See* Regulation (EU) 2017/1128
- Premier League and Murphy* decision, 96–108, 113, 226, 229, 241
 Factual background, 96
 Portability Regulation, 200
- Price discrimination, 66, 73, 105, 118; *see also* Geo-blocking
- Private exchange institutions. *See* Collective management organisations
- Property rule, 28
- Proportionality, 23, 136, 195

282 Index

- Pro rata, 41, 44
PRS/M/STIM/GEMA/fV decision, 59–60, 176
 Public broadcasting, 7, 193, 197–198
 Proposal for Regulation on Online Transmissions of Broadcasting Organisations, 213–215
 Terms of service, 197
 Radio programmes, 14, 149, 180, 197, 210–214
 Re-aggregation of rights, 225
 Reciprocal representation agreements, 54, 223, 228
 After Directive 2014/26/EU, 168
 Competition law, 79, 80, 86
 Definition, 54
 Functioning, 55
 Recommendation 2005/737/EC, 54, 89, 123, 135, 224, 236
 Background, 123
 Codification, 145
 Definitions, 9
 Impact assessment, 125, 132
 Monitoring Report, 131
 Option 3 publishers, 125, 126
 REFIT. *See* European Commission
 Regulation, 17, 19, 227
 Regulatory instruments, 18–21, 132–133, 145, 174, 223
 Self-regulation, 19
 Regulation (EU) 2017/1128, 39, 185–201, 216, 226
 Free services, 193–194, 196
 Legal mechanisms of, 189–191
 Public broadcasting, 197–198
 Proposal for, 185
 Scope of, 186
 Temporary presence, 189
 Verification, 192
 Regulation (EU) 2018/302, 201–210, 227, 229
 Access to goods or services, 204
 Access to interfaces, 204
 Passive sales, 207
 Proposal for, 201
 Scope of, 202–204
 Remix, 10, 253
 Repertoire fragmentation, 223, 225, 254
 Restriction of competition by object, 78
 Rights databases, 225
 Rights of associations, 10
 Royalties, 41, 77, 127
 Distribution, 41, 86
 RRAs. *See* Reciprocal representation agreements
 RTL Group. *See* CISAC cases
 SatCab Directive, 178–179, 247–249
 Collecting societies, 137–138
 Consultation on, 23, 210–213
 CRM Directive, 151
 Cross-border Portability Regulation, 200, 226, 239
 Geo-blocking Regulation, 213
 Proposal for a Regulation on Online Transmissions of Broadcasting Organisations, 213, 216
 Sidney Agreement, 81
 Sector-specific regulation, 231, 234
 Self-publishing, 39, 191
 Self-regulation. *See* Regulation
 Services Directive, 164, 178, 204, 252
Simulcasting decision, 50, 79, 85, 223
 Single market. *See* Internal market
 Social welfare, 45
 Soft law, 11, 18, 20, 123, 128, 131
 Software, 114
 Specific subject matter. *See* Copyright
 Split copyrights, 37
 Sports content, 64, 67, 200, 204, 215
 Copyright in, *see* *Premier League and Murphy*
 Spotify, 6, 39, 180–182
STIM v. Commission decision, 91, 94
 Streaming, 7–8, 37–40
 Substitutional effect, 40
 Video on demand, 62–63
 Subscription services. *See* Business models
 Subsidiarity, 23, 118, 136, 160, 230
 Substantive copyright, 10
 Sweden, 91, 113, 136, 139, 140, 160
 Sydney Agreement, 84
 Technical protection mechanisms, 66, 183–185
 Technical Standards Directive, 39
 Technological neutrality, 211
 Television without Frontiers Directive, 177
 Terms of service providers, 38, 180–183
 Territoriality, 4, 88, 204, 244–245, 251, 254
 Concept, 31–32, 37
 Geo-blocking, 65
 Online Music Recommendation, 128
 Premier League and Murphy, 118
 Reciprocal representation agreements, 82
 Three-step test, 198, 230, 249

Index

283

- Tournier* decision, 50, 54, 78, 80, 87, 223, 224
 Transaction cost economics, 48
 Transaction costs, 29, 63, 223, 224; *see also* Collective management organisations
 Transactional services. *See* Business models
 Transparency, 63, 123, 134, 145, 153
 Collective management organisations, 123, 134, 145–146, 152, 175, 225
 Law-making, 22, 24
 Rights clearance, 63
 Treaty of Rome, 11
 Unitary copyright title, 13, 245
 United States of America, 11, 37, 42
 Unjustified geo-blocking. *See* Geo-blocking
 UsedSoft decision, 102, 114, 115, 240
 User generated law, 19
 Versioning. *See* Price discrimination
 Vertical agreements, 77, 78; *see also* Licensor–licensee relationship
 Vertical Block Exemption Regulation, 208
 Verwertungsgesellschaftengesetz, 137, 140, 142
 Webcasting. *See* *Simulcasting* decision
 Withdrawal right, 155, 167
 YouTube, 6, 39, 41, 254