

## Index

- adaptation  
 generally, 116, 122, 123, 125  
 right of, 75, 122  
 works of, 44, 144
- appropriation art, 139, 221
- architecture  
 application of quotation exception, 45, 91, 102  
 definition of quotation, 91, 102  
 publication, 73  
 quotation of, 95–9
- Aronsson-Storrier, Adrian, 41
- artistic works  
 application of quotation exception, 11, 101, 215  
 quotation of, 10, 12, 14, 16, 27, 46, 100  
 short quotations, 103
- attribution  
 requirement of, 3, 16, 57, 58, 59, 60, 77–8, 124, 130, 145, 159, 190, 200, 202, 209, 210, 219, 221–2  
 right of, 57, 60, 77–8, 199
- Aufderheide, Patricia, 223–4
- authors  
 attribution. *See* attribution  
 dialogue. *See* dialogue  
 economic rights. *See* economic rights  
 moral rights. *See* moral rights  
 national treatment. *See* national treatment  
 quotation, as a right of, 111
- authors' rights, 111, 146, 147, 180, 188
- Bacon, Francis, 119–20, 126, 129
- Battleship Potemkin, The*, 118, 119, 120–1, 126
- Beebe, Barton, 200
- Benoliel, Daniel, 167
- Bergström, Svante, 18, 27, 58
- Berne Convention  
 Brussels Revision, 3, 6, 12–16, 18, 19, 20, 21, 22, 23, 27, 28, 30, 31, 34, 58, 69, 77, 78, 103, 137  
 Paris Revision, 31, 122
- Rome Revision, 3, 6, 8–11, 12, 13, 21, 30, 31, 77, 101, 123
- Stockholm Revision, 3, 6, 16–28, 29, 30–1, 58, 69, 73–4, 80, 101, 103, 111, 122, 136, 137, 139, 141, 150, 202, 227
- Bicknell, Jeanette, 126, 128–9
- BIEM, 20
- BIRPI, 17–18, 22, 27, 29, 101, 103, 107, 136
- Bochumberg, Lionel, 84, 141, 149, 206
- Bodenhausen, Georg, 18
- Bohannan, Christina, 155
- borrowings, 8, 9, 10, 13, 15, 123
- broadcasts  
 application of quotation exception, 47, 50–2
- caricature, 41, 42, 123, 124, 217, 219, 220–1
- Cézanne, Paul, 105–7, 126, 129
- Chon, Margaret, 165
- chrestomathies, 7, 9, 14, 15
- cinematographic works  
 application of quotation exception, 14, 44  
 economic rights, 55  
 versus film fixations, 13, 54
- CISAC, 22
- citation, 13–14, 15, 59, 69, 83, 90, 91, 100–1, 116, 117, 205
- CJEU rulings  
*Deckmyn*, 85, 123, 158, 221  
*Funke Medien*, 35, 36–37, 161, 163  
*Painer*, 47, 99, 160, 210–11  
*Pelham*, 4, 35, 36, 37, 47, 52, 70, 85, 88, 93, 99, 108, 126, 132, 139, 163, 211–14, 215  
*Spiegel Online*, 4, 35, 36, 37, 44, 74, 75, 99, 161, 163, 211, 214–5
- collage, 92
- commons, intellectual, 157
- communication to the public, right of, 56, 110, 122
- computer programs, 39–40, 47–8, 52, 55, 90, 144

- contract, overridability by. *See* imperative nature  
 of quotation exception  
 copy-left, 2  
 Craig, Carys, 133–4  
 Crews, Kenneth, 171–2  
 criticism  
 Digital Single Market Directive Art 17(7), 36,  
 41–2, 55  
 or review, fair dealing, 99, 210, 217, 222. *See* fair  
 dealing  
 or review, purpose of, 4, 55, 69, 132, 144, 145, 174,  
 175, 208–9, 210  
 purpose of, 4, 9, 15, 147, 204
- databases, 40, 47, 49–50, 52, 53, 90  
 De Palma, Brian, 120, 121, 122, 126, 139  
 Dean, Winton, 109  
 Deazley, Ronan, 174, 220  
 dialogue, 4, 70, 95, 132–4, 212–13, 215  
 dictionary  
 of quotations, 102, 112, 135–6  
 dictionary meaning  
 French, 23, 87  
 generally, 84–7  
 of quotation, 91, 101, 114, 131  
 Oxford English, 91  
 Dinwoodie, Graeme, 152, 153  
 distribution, right of, 35, 55, 56, 67, 68  
 divulgation, right of, 60, 71, 72, 74, 76, 159, 198  
 Dotan, Amira, 170  
 dramatic works  
 definition of quotation, 91  
 guidelines, 175  
 Drahos, Peter, 157  
 Drassinower, Abraham, 111, 133  
 Dreyfuss, Rochelle, 62, 152  
 Dusollier, Séverine, 162  
 Dworkin, Gerald, 51, 63  
 Dyer, Richard, 123–4, 126, 129
- economic rights  
 adaptation, right of. *See* adaptation, right of  
 communication to the public, right. *See* com-  
 munication to the public, right of  
 distribution, right of. *See* distribution, right of  
 making available to the public, right of. *See*  
 making available to the public, right of  
 rental, right of. *See* rental, right of  
 reproduction, right of. *See* reproduction, right of  
 translation, right of. *See* translation, right of  
 education  
 exceptions for, 19, 21, 22, 29, 35, 136, 144  
 Eisenstein, Sergei, 118–9, 120–1, 122, 126, 129  
 Elkin-Koren, Niva, 145, 169–171
- Elmahjub, Eziuddin, 165–66  
 Epstein, Richard, 173  
 European Broadcasting Union, 17, 22, 23, 103
- fair dealing  
 Australia, 18, 217, 220  
 criticism or review, 99, 208, 209, 210  
 parody, 219, 221  
 Singapore, 144–5  
 United Kingdom, 11, 130, 145–6, 161, 175, 176,  
 178, 209–210, 216, 223, 221–2
- fair practice  
 bad faith, 176–80  
 custom, 168–76  
 distributive justice, 163–7  
 freedom of expression, 159–63  
 generally, 4, 13, 24, 146, 149, 177, 188, 208–9  
 harm factor, 154–9  
 honest commercial practices, 180–4  
 international norm, 37, 151–4  
 national approaches, 142–8  
 relationship to proportionality. *See*  
 proportionality  
 rules versus standards, 185–9  
 state practice, 148–50  
 three-step test, 150–1
- fair use  
 Australia, 166, 217–8  
 best practice/guidelines, 169, 170–3, 174, 223–4  
 Israel, 145–6  
 global mandatory fair use, 1, 2, 5, 190, 225,  
 228, 229  
 moral rights, 200–1  
 Singapore, 144–5  
 South Africa, 193, 208, 226  
 Sri Lanka, 143–4, 206  
 three-step test, 1, 62–3, 193  
 transformative use, 196–7  
 United States, 1, 2, 4, 62, 143, 152, 156, 166, 177–8,  
 179, 192, 194, 200–1, 203, 204, 216, 217, 220  
 unpublished nature of work, 198
- fairness  
 factors, 37, 141, 144, 145–6, 203, 216, 217, 221
- Ficsor, Mihály, 114–5
- film  
 application of quotation exception, 91, 99–100  
 definition of quotation, 91, 106, 113  
 fixations of, 36, 47, 53  
 quotation of fixations, 54  
 quotations of, 93–4, 102, 118–21  
 Fischman-Afori, Orit, 170–1  
 Frankel, Simon, 179  
 free riding, 154, 196  
 free use, 150–1, 204

- freedom of art, 89, 207  
 freedom of expression, 3, 4, 36, 37, 38, 54, 79,  
 89–90, 141, 151, 153, 159–63, 179, 180, 184, 185,  
 189, 196, 197, 211, 217, 219, 220, 222  
 Fried, Michael, 117, 128
- Geiger, Christophe, 201  
 Geist, Michael, 226  
 Geller, Paul, 62  
 General Comment (ICESCR), 59  
 Gervais, Daniel, 61, 201  
 Ginsburg, Jane, 31, 33, 49, 56, 59, 63, 105, 121, 141, 142,  
 150, 152–3, 200  
 Godard, Jean-Luc, 94  
 Goodman, Nelson, 115  
 Gordon, Douglas, 102  
 Gordon, Wendy, 154  
 Griffiths, Jonathan, 151, 161  
 Grosse Ruse-Khan, Henning, 31
- Helfer, Larry, 63  
 Hesser, Torwald, 2, 17, 19, 27, 34, 70, 103  
 Hudson, Emily, 124, 212, 221, 224  
 Hugenholtz, Bernt, 32  
 Hughes, Justin, 63, 164, 193  
 human rights, 59, 80, 156, 160
- ILO (International Labour Organization), 25  
 imperative nature, of quotation exception, 38–43  
 integrity  
 right of, 57, 58, 60, 107, 122, 158, 200, 220, 222  
 interests, 4, 79, 114, 141, 153, 158, 159, 185, 199,  
 203, 216, 220  
 INTERGU (International Gesellschaft Fuer  
 Urheberrecht), 17, 22, 24, 46  
 International Covenant on Civil and Political  
 Rights, 160  
 International Covenant on Economic, Social and  
 Cultural Rights, 59  
 International Federation of Journalists, 17, 22, 23  
 International Publishers Association, 17, 22, 24  
 interpretation. *See* treaty interpretation, judicial  
 interpretation, of quotation
- Jacques, Sabine, 60, 216, 219  
 Jaszi, Peter, 170, 223–4  
 Johnson, Phillip (architect), 95–7  
 judicial interpretation, of quotation, 4, 190,  
 209–16, 223
- Kadens, Emily, 168  
 Kapczynski, Amy, 164  
 Kellogg, Matt, 179  
 Koh, Harold, 228
- Korobkin, Russell, 186  
 Kur, Annette, 31, 32
- lawfulness. *See* making available to the public,  
 requirement of quotation exception, fair  
 practice, bad faith  
 Leval, Pierre, 178, 179, 196  
 literary and artistic works (Berne, copyright), 7, 8,  
 36, 44, 45, 50, 51, 52, 53, 55–56, 73, 142, 153  
 literary works  
 application of quotation exception, 7, 10,  
 43–4  
 hyperlinks, 214–5  
 quotation limited to, 90–1  
 short works, 107  
 Liu, Jiarui, 197–8  
 Lucas, André, 202  
 Lunney, Glyn, 166
- making available to the public  
 requirement of quotation exception, 3, 21, 60,  
 71–7, 101, 159, 190, 198, 202, 209, 210, 216, 219, 221  
 right of, 35, 56, 67, 68  
 Manet, Edouard, 116–17, 118, 122, 126, 128, 129  
 Marrakesh  
 EU Directive, 43  
 Treaty, 35, 42–3, 165  
 Masouyé, Claude, 18, 21, 27  
 Mee, Ben, 218  
 McCutcheon, Jani, 218  
 Metzger, David, 102, 109, 115, 127, 139  
 misquotation, 89, 125  
 moral rights. *See* integrity, right of, divulgation,  
 right of, attribution, right of  
 musical works  
 application of quotation exception, 10, 11, 23, 46,  
 47, 93, 111, 147, 205, 213  
 guidelines, 175  
 quotation of, 100  
 quotation, definition of, 129  
 quotations in, 92–3, 109–10, 115–16, 126, 127
- national law. *See* state practice  
 compatability of, 204–9  
 national treatment, 32, 33, 152  
 neighbouring rights. *See* related rights  
 Netanel, Neil, 49, 145, 200  
 news, 14–5, 16, 19–20, 21, 24, 30, 35, 55, 69, 78, 103,  
 121, 144, 228  
 Nimmer, David, 62  
 non-textual, 100, 101
- Okediji, Ruth, 1  
 Okpaluba, Johnson, 139

- ordinary meaning, 2, 6, 45, 84–5, 87–90, 102, 105, 107, 111, 112, 115, 121, 125, 127, 128, 130, 134, 136, 139, 153, 214, 215, 226
- Paris Revision, Berne. *See* Berne Convention
- Parkin, Jane, 87, 91, 213, 214
- parody, 4, 41, 42, 60, 123, 124, 216–22
- part. *See* quotation, meaning of
- pastiche, 41, 42, 94, 97, 98, 121, 123–4, 126, 217, 219, 220–1
- performances  
 application of quotation exception, 47, 50–2
- phonograms  
 application of quotation exception, 47, 50–2, 211, 213
- photographs, 11, 47  
 application of quotation exception, 106  
 guidelines, 175, 223  
 non-original, 53
- Plaisant, Marcel, 16, 30
- pluralism  
 dysfunctional, 225, 226, 228  
 fair practice norm, 141, 151–4, 185, 189, 203, 216
- press publishers  
 rights of, 54–5
- press summaries, 16, 21, 24, 30, 121–2
- proportionality  
 EU principle, 37, 38  
 meaning of, 80–2, 203  
 relationship to fair practice, 78–9, 149, 203  
 requirement of, 3, 104, 107, 130, 190, 203, 210, 212, 216
- publication  
 distinct from disclosure, 72–3
- published editions, 47, 53
- publishers guidelines, 173–5, 222
- quotation  
 purpose of, 2, 3, 4, 6, 10, 12, 24, 27, 79, 80, 132, 141, 147, 148, 180, 185, 189, 203, 204, 215, 216
- quotation exception, history of  
 Berne, 6–8  
 Brussels Revision, 12–16  
 Rome Revision, 8–11  
 Stockholm Revision, 16–28
- quotation exception, requirements of  
 attribution. *See* attribution, requirement of  
 fair practice. *See* fair practice  
 lawfully made available to the public.  
*See* making available to the public  
 mandatory nature, 29–38  
 proportionality. *See* proportionality
- quotation marks, 83, 125, 126, 127, 214, 215, 224
- quotation, interpretation of. *See* ordinary meaning, dictionary meaning, CJEU rulings
- quotation, meaning of  
 alteration, 114–25  
 deliberate usage, 128–30  
 dictionary meaning. *See* dictionary meaning  
 entire work, 104–8  
 further an argument, 131–8  
 identifiable, 125–8  
 incorporated into another work, 110–13  
 judicial interpretation. *See* judicial interpretation  
 length of, 101–4, 113–14  
 ordinary meaning. *See* ordinary meaning  
 related rights. *See* related rights  
 types of works, 90–101, 215
- Reichman, Jerome, 62
- Reimer, Dietrich, 103
- Reinbothe, Jorg, 48
- related rights, 36, 41, 47, 51–52, 53, 54
- rental, right of, 55, 56, 64, 67, 68
- reproduction, right of, 21, 23, 27, 29, 35, 36, 55, 57, 61, 62, 71, 75, 122, 124, 150, 211
- revues de presse, 14, 15, 21, 121
- Ricketson, Sam, 31, 33, 48, 49, 56, 64, 66, 105, 121, 141, 142, 150, 158
- Rome Convention, 36, 44, 47, 50–2
- Rosenblatt, Elizabeth, 169
- Rothman, Jennifer, 169, 172–3, 176
- sampling, 92–3, 115, 120, 123, 132, 139, 175, 221
- Samuelson, Pamela, 63, 65
- satire, 217–20
- self-quotation, 98, 99, 109–10
- Senftleben, Martin, 31, 32, 136, 201
- Shaver, Lea, 165
- Slocum, Brian, 84, 86, 87, 88
- Software Directive, 39–40, 41
- sound recordings  
 phonogram. *See* phonogram  
 quotation in, 110, 122  
 sample of, 52, 211
- state practice, 48, 112, 136, 141, 148–50
- Stirling, James, 95, 97–9
- Stockholm Revision, Berne  
 Authors' Consultative Committee, 20, 22  
 Committee of (Non-Official) Experts, 20–1  
 Committee of Government Experts, 25–6  
 Draft Treaty, 26  
 Intergovernmental Conference, 26–8  
 Interest Group inputs, 22–24

- introduction, 16–17
- Study Group, 17–20, 21–2, 71, 101, 103
- travaux*, 3, 6, 29–31, 58, 69, 74, 80, 136, 137, 139, 141, 150, 202
- Working Group on the Right of Reproduction, 150
- Straschnov, Georges, 103
- Subotnik, Eva, 178–9
- Suzor, Nicolas, 165–66, 218, 220
  
- teaching, 7, 9, 10, 15, 68, 70, 136, 140, 144, 148, 204
- technological protection measures, 38, 40, 42, 43
- three-step test
  - Berne Art 9(2), 60, 61–3, 150–1, 187, 194, 221
  - cumulative nature, 201–2
  - Information Society Directive, 37–38
  - parody, 4, 216–17
  - relationship to quotation exception, 3, 4, 57, 60–68, 141, 190–204, 225
  - Tournier, Alphonse, 20, 21
  - TRIPS Art 13, 49, 51, 60, 63–5
  - WCT Art 10, 56, 60, 62, 65–8
  - WPPT Art 16, 52
  - WTO Panel Report. *See* WTO Panel Report
- transformative use, 102, 115, 146, 196–7, 203. *See* fair use
- translation
  - generally, 13, 28, 122, 165
  - right of, 55, 68, 75, 122
  - works of, 44
  
- treaty interpretation, 84, 89, 148, 151, 153
- Ulmer, Eugen, 20, 27
- UNESCO, 25
- Universal Declaration of Human Rights, 59
- Untouchables, The*, 120, 121, 128
  
- Van Houweling, Molly, 166
- Vienna Convention on the Law of Treaties, 48, 66, 84, 89, 148, 153
- visual art
  - application of quotation exception, 44, 108
  - definition of quotation, 91
  - moral rights, 201
  - short quotation, 102
- von Lewinski, Silke, 48, 108, 113, 121
  
- Wadlow, Christopher, 181
- Wallace, William, 103, 139
- Walter, Michel, 108, 113
- Weinrib, Lloyd, 178
- WIPO Guide, 31, 49, 51
- works. *See* dramatic works, cinematographic works, musical works, artistic works, literary works
- WTO Panel Report, 64–65, 65, 152, 191, 192–3, 194–6, 199, 202, 203, 221
  
- Xalabarder, Raquel, 31, 36, 228
  
- Yansky-Ravid, Schlomit, 165
- Young, Ernest, 168