

## 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
- Bodenhause, Georg, 18
- Bohannon, 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, 129  
 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  
     compatibility 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
- Senffleben, 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