Research Handbook on Human Rights and Intellectual Property

Edited by

Christophe Geiger

Associate Professor, Director General and Director of the Research Department, Centre for International Intellectual Property Studies (CEIPI), University of Strasbourg, France

RESEARCH HANDBOOKS IN INTELLECTUAL PROPERTY

Edward Elgar

Cheltenham, UK • Northampton, MA, USA
Contents

List of contributors VIII
Foreword xii
Catherine Trautmann xv
List of abbreviations
Introduction 1
Christophe Geiger

1. Mapping the interface between human rights and intellectual property 6
   Laurence R. Heifer

PART I  LEGAL REALITY BEHIND HUMAN RIGHTS

2. Human rights and balancing: The principle of proportionality 19
   Jonas Christoffersen
   Peggy Ducoulombier
4. Interaction between international human rights law and the European legal framework 52
   Rhona Smith
5. Overlaps and conflict norms in human rights law: Approaches of European courts to address intersections with intellectual property rights 70
   Henning Grosse Ruse-Khan
6. Human rights and the philosophical foundations of intellectual property 89
   Daniel Gervais

PART II  HUMAN RIGHTS' IMPLICATIONS FOR THE DEVELOPMENT OF INTELLECTUAL PROPERTY

Section 1  Human Rights' Implications for Intellectual Property Legislation

7. The constitutionalization of the European legal order: Impact of human rights on intellectual property in the EU 103
   Tuomas Mylly
8. The fundamental right to (intellectual) property and the discretion of the legislature 132
   Alexander Peukert
9. Human rights and international intellectual property law 149
   Hannu Wager and Jayashree Watal
10. Human rights and intellectual property law at the bilateral and multilateral levels: Substantive and operational aspects
   Xavier Seuba

11. Mitigating the impact of intellectual property in developing countries through the implementation of human rights
   Carlos M. Correa

Section 2 Impact of Human Rights on Decisions of Courts and Intellectual Property Offices

12. Intellectual property in decisions of national Constitutional Courts in Europe
   Thomas Dreier and Marco Ganzhorn

13. Intellectual property in decisions of Constitutional Courts of Latin American countries
   Denis Borges Barbosa and Charlene de Avila Plaza

14. Human rights and intellectual property in the United States: The role of United States courts in striking a fine balance between competing policies
   Toshiko Takenaka and Linda Falcon

15. Fundamental rights in the practice of the European Trade Mark and Designs Office (OHIM)
   Philipp von Kapff

16. Human rights in the case law of the EPO Boards of Appeal
   Agnieszka Kupzok

PART III PRACTICAL INTERACTION BETWEEN HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Section 1 Civil and Political Rights and Intellectual Property

17. Freedom of expression and the right to information: Implications for copyright
   Dirk Voorhoof

18. Free signs and free use: How to offer room for freedom of expression within the trademark system
   Martin Senftleben

19. Free speech and other human rights in ICANN's new generic Top Level Domain process: Debating top-down versus bottom-up protections
   Jacqueline D. Lipton

20. Intellectual property and human rights: Reputation, integrity and the advent of corporate personality rights
   Guido Westkamp

21. Freedom to conduct a business, competition and intellectual property
   Gustavo Ghidini and Andrea Stazi

22. Right to property and trade secrets
   Tanya Aplin
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23.</td>
<td>Enforcement of intellectual property rights and the right to a fair trial</td>
<td>Jonathan Griffiths</td>
<td>438</td>
</tr>
<tr>
<td>24.</td>
<td>Digital copyright enforcement measures and their human rights threats</td>
<td>Peter K. Yu</td>
<td>455</td>
</tr>
<tr>
<td></td>
<td><strong>Section 2 Economic, Social and Cultural Rights and Intellectual Property</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>Human dignity and patents</td>
<td>Aurora Plomer</td>
<td>479</td>
</tr>
<tr>
<td>26.</td>
<td>Right to health and patents</td>
<td>Duncan Matthews</td>
<td>496</td>
</tr>
<tr>
<td>27.</td>
<td>Public health and trademarks: Plain packaging laws and the TRIPS</td>
<td>Jeffrey M. Samuels</td>
<td>513</td>
</tr>
<tr>
<td>28.</td>
<td>Right to food and intellectual property protection for plant genetic resources</td>
<td>Claudio Chiarolla</td>
<td>521</td>
</tr>
<tr>
<td>29.</td>
<td>Geographical indications and cultural rights: The intangible cultural heritage connection?</td>
<td>Dev S. Gangjee</td>
<td>544</td>
</tr>
<tr>
<td>30.</td>
<td>Right to culture and copyright: Participation and access</td>
<td>Caterina Sganga</td>
<td>560</td>
</tr>
<tr>
<td>31.</td>
<td>Human rights, persons with disabilities and copyright</td>
<td>Abbe Brown and Charlotte Waelde</td>
<td>577</td>
</tr>
<tr>
<td></td>
<td><strong>Section 3 Collective Rights and Intellectual Property</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32.</td>
<td>The right to development: What implications for the multilateral intellectual property framework?</td>
<td>Ahmed Abdel-Latif</td>
<td>605</td>
</tr>
<tr>
<td>33.</td>
<td>Using intellectual property rules to support the self-determination goals of indigenous peoples</td>
<td>Susy Frankel</td>
<td>627</td>
</tr>
<tr>
<td>34.</td>
<td>Human rights perspective on protection of traditional knowledge and intellectual property: A view from island states in the Pacific</td>
<td>Sue Farran</td>
<td>641</td>
</tr>
<tr>
<td></td>
<td><strong>PART IV FUTURE PERSPECTIVES FOR THE INTERPLAY OF HUMAN RIGHTS AND INTELLECTUAL PROPERTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35.</td>
<td>Implementing intellectual property provisions in human rights instruments: Towards a new social contract for the protection of intangibles</td>
<td>Christophe Geiger</td>
<td>661</td>
</tr>
<tr>
<td></td>
<td><strong>Index</strong></td>
<td></td>
<td>691</td>
</tr>
</tbody>
</table>