

INFORMATION LAW SERIES

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AND THE INTERNET**

**Edited by
Irina A. Stamatoudi**



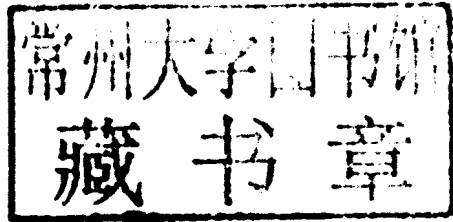
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Copyright Enforcement and the Internet

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Irini A. Stamatoudi



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-3346-5

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Printed in Great Britain.

Preface

Sustainability and economic growth, particularly in a period of international economic crisis, seem to be closely linked to the advancement and protection of technology and knowledge. Intellectual property constitutes *par excellence* the means for the protection of the fruits of the mind. Such protection, of course, is nothing but an empty shell if it is not enforced or if it is not properly enforced. The enforcement of intellectual property rights is high on the agenda of the European Union¹ and the international agenda alike.² Perhaps the most interesting aspect of it is copyright enforcement on the Internet, in the sense that it tries to supersede the limitations of law in order to respond effectively to the challenges of new technologies and the Internet. On top of it, copyright protection has always been a controversial issue with regard to its subject matter, scope and methods of enforcement. Copyright's immaterial nature has not helped it to be easily conceived in the minds of people as a form of property.

A multitude of issues arises in respect of copyright enforcement on the Internet: the collection of evidence on copyright infringement; private international law issues, Internet Service Providers' liability; the conflict of rights and interests, such as the conflict (and balancing) between copyright, data protection and privacy, and issues relating to the EU Enforcement Directive so on. Social policy and behaviour questions emerge, such as: should we enforce copyright on the Internet? To what extent or to what social (or human rights') cost? Who is infringing, he who uploads, he who downloads or he who provides his services for electronic communications? How do we balance the need for enforcement with the offering of data and works on the Internet, at a

1. Both in the internal market and in the EU's external trade.

2. By the term 'international agenda' I refer to international initiatives led by developed countries with vital interests in the area.

low cost and in an efficient manner? In this regard, there are a number of European Union and international policies, national thoughts and solutions, technical measures, soft law and hard law models that have been proposed, and fears that have been raised. This book will try to explore a good deal of them.

The bulk of legislative activity (including soft law) in the area of enforcement during recent years at European Union and international level clearly demonstrates the extent to which this issue has been brought to the forefront of attention. Enforcement represents an important issue in a changing world of attitudes. Will we stand still or will we move forward? And if we move forward, in which direction will that be? The following legislative activity and initiatives offer some answers to these questions:

At European Union level:

- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157/45 of 30.4.2004, as corrected and republished in OJ L 195/16 of 2.6.2004);
- the relevant provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178/1 of 17.7.2000) and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167/10 of 22.6.2001);
- Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, and Council Regulation (EC) No 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003;
- amended Proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM (2006) 168 final of 26.4.2006);
- Commission Strategy for the Enforcement of Intellectual Property Rights in Third Countries of 2005 and to the Commission Staff Working Document ‘IPR Enforcement Report 2009’ (OJ C 129 of 26.5.2005);
- draft Report of the Committee on Legal Affairs on enhancing the enforcement of intellectual property rights in the internal Market, 13.1.2010, (2009/2178(INI));
- Resolution of the European Parliament on defining a new digital agenda for Europe: from i2010 to digital.eu, 5.5.2010, (2009/2225(INI));
- draft Opinion of the Committee on Industry, Research and Energy for the Committee on Legal Affairs (European Parliament) on enforcement

- of intellectual property rights in the internal market, 29.01.2010, (2009/2178(INI));
- draft Opinion of the Committee on the Internal Market and Consumer Protection for the Committee on Legal Affairs (European Parliament) on enhancing the enforcement of intellectual property rights in the internal market, 5.02.2010, (2009/2178(INI));
 - Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market (OJ C 56/01);
 - Commission Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market (COM (2009) 467 final);
 - Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan including the European network for administrative cooperation referred to in it with a view to ensuring rapid exchanges of information and mutual assistance among the authorities engaged in the field of the enforcement of intellectual property rights (OJ C 253/1);
 - Conclusions of 20 November 2008 on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment (OJ L 195/16);
 - the Telecom Package (Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services) (OJ L 337/37);
 - Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121/37);
 - Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime (OJ L 63/1);
 - Conclusions of 24 September 2009 on ‘Making the internal market work better’ (Council Document 13024/09);
 - Commission Recommendation 2009/524/EC of 29 June 2009 on measures to improve the functioning of the single market (OJ L 176/17);
 - the European Observatory on Counterfeiting and Piracy;
 - proposals for the review of the Brussels I Regulation (Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12/1)); see, for example, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM (2009) 174 final));

Preface

- the setting up of ENISA: the European Network and Information Security Agency, working for the EU Institutions and Member States and dealing with security issues of the European Union (<www.enisa.europa.eu/about-enisa>).

At international level:

- The Anti-Counterfeiting Trade Agreement (ACTA);
- the Advisory Committee on Enforcement (ACE) approved by the WIPO General Assembly at its 23 September to 1 October 2002 session.

Some national laws and initiatives on a par with national case law will be discussed in the relevant chapters of this book.

Special thanks to Maria Tzima for her invaluable help with copy editing and language correction.

The contributions are up to date as of 1 March 2010.

Athens, 1 April 2010.

Irini A. Stamatoudi

Table of Contents

| | |
|--|-----------|
| Preface | xv |
| Part I European Union and International Policies | 1 |
| Part I | |
| The EU Enforcement Directive 2004/48/EC as a Tool for Copyright Enforcement | 3 |
| <i>Jörg Reinbothe</i> | |
| I. Introduction: The Background for the EU Enforcement Directive | 3 |
| A. Enforcement Legislation in the Context of EU Harmonization and the Fight against Piracy | 3 |
| B. Enforcement in the WIPO Conventions and in the TRIPs Agreement | 4 |
| C. External and Internal Enforcement: The Layers of Regulatory Measures | 5 |
| D. The Enforcement Directive in the Context of the <i>Acquis Communautaire</i> | 6 |
| 1. The Rationale for Horizontal Enforcement Legislation in the EU | 7 |
| 2. Gaps in Enforcement Rules | 8 |
| 3. The Accession of Ten New Member States Created a Momentum | 8 |
| E. Preparatory Steps Undertaken by the European Commission | 8 |
| F. The Main Objectives of the Enforcement Directive | 9 |

Table of Contents

| | | |
|------|---|----|
| II. | The Directive 2004/48/EC on the Enforcement of Intellectual Property Rights in Detail | 9 |
| A. | From the Commission Proposal to the Adoption of the Directive | 9 |
| B. | The Contents of the Enforcement Directive | 10 |
| 1. | The Structure of the Directive as Adopted | 10 |
| 2. | Subject Matter and Scope (Articles 1 and 2) | 11 |
| 3. | General Obligation (Article 3) | 13 |
| 4. | Beneficiaries of Sanctions and Remedies ('Persons Entitled to Apply for the Application of the Measures, Procedures and Remedies'), Article 4 | 13 |
| 5. | Presumption of Authorship or Ownership (Article 5) | 14 |
| 6. | Evidence (Articles 6 and 7) | 14 |
| 7. | Right of Information (Article 8) | 15 |
| 8. | Provisional and Precautionary Measures (Article 9) | 17 |
| 9. | Sanctions: Corrective Measures (Article 10) | 18 |
| 10. | Sanctions: Injunctions (Article 11) | 18 |
| 11. | Sanctions: Alternative Measures (Article 12) | 19 |
| 12. | Sanctions: Damages (Article 13) | 19 |
| 13. | Legal Costs (Article 14), Publication of Judicial Decisions (Article 15) | 20 |
| 14. | 'Sanctions by Member States': Criminal Sanctions (Article 16) | 21 |
| 15. | Codes of Conduct (Article 17) | 22 |
| 16. | Assessment (Article 18) | 23 |
| 17. | Exchange of Information and Correspondents (Article 19) | 23 |
| III. | Summary and Evaluation of the Enforcement Directive | 23 |
| IV. | The Way Forward | 24 |
| A. | Piracy as a Continuing Threat | 24 |
| B. | Other Initiatives Taken since 2004 | 24 |
| C. | Conclusion on the Perspectives | 27 |

Part I

Where Is ACTA Taking Us? Policies and Politics 29

Luc Pierre Devigne, Pedro Velasco-Martins & Alexandra Iliopoulou

| | | |
|-----|---|----|
| I. | Counterfeiting and Piracy Keep Increasing: The Problem and Its Dimensions | 29 |
| II. | Fighting against Counterfeiting and Piracy from the EU Perspective | 30 |
| A. | Protecting IPR Worldwide Is a Key Trade Priority | 30 |
| B. | The Current Legal Framework for IP Enforcement in the EU | 31 |

| | | |
|------|---|----|
| III. | The Anti-Counterfeiting Trade Agreement | 33 |
| A. | Why Do We Need a New International Agreement on IP Enforcement? | 33 |
| B. | The Launch of Negotiations on the ACTA | 34 |
| C. | The Three Pillars of ACTA | 35 |
| 1. | International Cooperation between Enforcement Authorities | 35 |
| 2. | Adoption of Best Practices | 35 |
| 3. | Improved Legal Framework on IPR Enforcement | 36 |
| a. | Civil Enforcement | 37 |
| b. | Border Measures | 37 |
| c. | Criminal Enforcement | 38 |
| d. | Special Requirements Related to Rights Management Technology and the Internet | 39 |
| IV. | The ACTA Negotiating Process | 39 |
| A. | Transparency | 39 |
| V. | Next Step of the ACTA Negotiations | 40 |
| VI. | Conclusion | 41 |

Part I

Copyright Enforcement in the Digital Era and Private International Law Issues **43**

Paul L.C. Torremans

| | | |
|------|--|----|
| I. | Introduction | 43 |
| II. | Right and Contract | 44 |
| A. | The Distinction | 44 |
| B. | Transferability | 45 |
| C. | Entitlement | 47 |
| III. | The Law Applicable to the Copyright Contract | 54 |
| A. | The Law is Chosen by the Parties | 55 |
| B. | The Applicable Law in the Absence of Choice | 55 |
| C. | Article 4 Rome I Regulation Applied in Practice | 57 |
| D. | Interim Conclusion | 61 |
| IV. | Respect for National Copyright and Copyright Contract Law? | 62 |
| V. | Conclusion | 63 |

Part I

The Global System of Copyright Enforcement: Regulations, Policies and Politics **65**

Michael D. Taylor

| | | |
|-----|---|----|
| I. | Introduction | 65 |
| II. | Multilateral Level | 68 |
| A. | The World Intellectual Property Organization (WIPO) | 68 |

Table of Contents

| | | |
|-------|--|------------|
| III. | The World Trade Organization: TRIPs Agreement | 72 |
| IV. | The World Customs Organization | 75 |
| V. | Interpol | 77 |
| VI. | The Group of Eight | 78 |
| VII. | Multilateral Level | 81 |
| | A. The Anti-Counterfeiting Trade Agreement | 81 |
| VIII. | Regional Level | 89 |
| | A. The European Union | 89 |
| | B. EC Regulation 1383/2003 | 89 |
| | C. Directive 2004/48/EC (IPRED) | 90 |
| | D. A Proposed Directive on Criminal Measures (IPRED2) | 91 |
| | E. The NAFTA | 92 |
| | F. The Asia-Pacific Economic Cooperation (APEC) | 94 |
| | G. The Association of South East Asian Nations (ASEAN) | 96 |
| | H. The European Free Trade Association | 97 |
| IX. | Bilateral Level | 97 |
| | A. Preferential Trade and Investment Agreements (PTIAs) | 97 |
| | B. FTAs: US | 98 |
| | C. FTAs: EU | 101 |
| | D. FTAs: EFTA | 103 |
| | E. Bilateral Investment Treaties | 104 |
| | F. Bilateral IP Instruments | 105 |
| | 1. US-EU IPR Working Group | 105 |
| | 2. EU-US Action Strategy for the Enforcement of IPRs | 106 |
| | 3. US-China | 106 |
| | a. The MOU on the Protection of Intellectual Property | 106 |
| | 4. US-China Joint Commission on Commerce and Trade | 107 |
| | 5. Industry and Government Cooperation | 108 |
| | 6. Industry Initiatives | 108 |
| X. | Recommendations and Conclusion | 110 |
| | Part II The Role of Internet Service Providers | 117 |
| | Part II | |
| | File-Sharing and the Role of Intermediaries in the Marketplace: National, European Union and International Developments | 119 |
| | <i>Maria Mercedes Frabboni</i> | |
| I. | Introduction | 119 |
| II. | Intermediaries: Access Providers and Platform Providers | 121 |
| III. | The Problem from an Economic Perspective | 123 |

| | | |
|------|--|-----|
| A. | The Copyright Framework: Exclusiveness and Its Boundaries | 123 |
| B. | Effects | 125 |
| IV. | Regulation | 126 |
| A. | Copyright: International and Regional Answers to Internet-Based Activities | 126 |
| B. | Rules on E-Commerce and Their Applicability to Intermediaries | 128 |
| V. | The Role of Intermediaries in the Individuals' Exercise of Fundamental Rights and Freedoms | 130 |
| A. | <i>Promusicae v. Telefónica</i> | 130 |
| 1. | Delivery of Information Concerning Internet Traffic | 130 |
| 2. | Fundamental Rights: Property versus Privacy | 132 |
| B. | Negotiated Solutions and Administrative Enforcement | 133 |
| 1. | United Kingdom: the Potential for a Voluntary Code of Practice | 133 |
| 2. | The 'Warning and Termination' Approach: Examples of National Implementation | 136 |
| 3. | Comment | 138 |
| VI. | Platforms Providers | 139 |
| A. | Platforms and Infringement: Different Implications of Different Technologies | 140 |
| B. | Pirate Bay | 141 |
| 1. | The Decision | 142 |
| 2. | Policy Comment | 144 |
| VII. | Comments and Conclusion | 145 |

Part II

| | |
|--|------------|
| The 'Graduated Response' in France: Is It the Good Reply to Online Copyright Infringements? | 147 |
| <i>Alain Strowel</i> | |

| | | |
|------|--|-----|
| I. | The French Laws on the 'Graduated Response' | 148 |
| A. | The 'Graduated Response' in a Nutshell | 149 |
| B. | Data Protection Issues | 151 |
| C. | A New Monitoring Obligation at the Core of the 'Graduated Response' | 152 |
| D. | Cooperation of Access Providers | 152 |
| II. | Comparison between the 'Graduated Response' and Other Internet-Related Enforcement Systems | 152 |
| III. | Internet Access is a Fundamental Right Rooted in the Freedom of Expression | 154 |
| A. | Freedom of Expression Protects Internet Access | 155 |

Table of Contents

| | | |
|-----|--|-----|
| | B. The Right to Access the Internet, as Protected by Freedom of Expression, Can Be Limited | 156 |
| IV. | A Few Concluding Remarks on the 'Graduated Response' | 158 |
| | A. Is the 'Graduated Response' a New Form of Access Control? | 158 |
| | B. Is the 'Graduated Response' a Workable Reply that Can Become the Norm? | 159 |

Part II

The Chase: The French Insight into the 'Three Strikes' System **163** *Valérie-Laure Benabou*

| | | |
|------|--|-----|
| I. | The Prey: The Partial Failure of Other Solutions against Wild P2P | 164 |
| | A. Locking P2P 'Upstream' by Technical Means | 164 |
| | B. Middlestream Approach with Reluctant Intermediaries | 165 |
| | 1. Offensive Strategy against File-Sharing Software Industry | 165 |
| | 2. Cooperative Strategy with Internet Service Providers | 166 |
| | C. Downstream Strategy: Targeting the Public | 168 |
| II. | The Trap: Mechanism of the French Law | 170 |
| | A. Duty to Ensure that Access Is Not Used for Copyright Infringement: Duty to Monitor the Connection | 171 |
| | B. Detection and Warnings Sent to the Subscriber | 173 |
| | C. Suspension of Internet Access and Others Sanctions | 175 |
| III. | Tally? | 179 |

Part II

User-Generated Content Sites and Section 512 of the US Copyright Act **183** *Jane C. Ginsburg*

| | | |
|------|---|-----|
| I. | Introduction | 183 |
| II. | The Statutory Notice-and-Take-Down Safe Harbour | 186 |
| | A. 'Service Provider' | 187 |
| | B. 'Storage at the Direction of a User' | 188 |
| | C. Statutory Conditions for Limitation on Liability: Knowledge or Awareness | 190 |
| | D. Statutory Conditions for Limitation on Liability: Direct Financial Benefit | 193 |
| | E. Statutory Conditions for Limitation on Liability: Right and Ability to Control Infringing Activity | 196 |
| III. | Conclusion | 197 |

| | |
|--|------------|
| Part II | |
| Data Protection, Secrecy of Communications and Copyright: Conflicts and Convergences – The Example of <i>Promusicae v. Telefonica</i> | 199 |
| <i>Irini A. Stamatoudi</i> | |
| I. Introduction | 199 |
| II. ISPs, IP Addresses and File Sharing | 201 |
| III. The Example of <i>Promusicae v. Telefonica</i> | 204 |
| A. Historical Background | 204 |
| B. Relevant Legal Provisions | 205 |
| C. Outcome and Open Questions | 213 |
| D. Conclusions | 221 |
| IV. National Experiences | 223 |
| V. Conclusions | 231 |
| Part II | |
| Criminal Liability on the Internet | 233 |
| <i>Dimitris Kioupis</i> | |
| I. Introduction: Old Problems and Modern Developments | 233 |
| II. Copyright Infringement and Criminal Liability | 237 |
| A. Criminal Acts Committed through P2P Networks | 241 |
| B. Third-Party Criminal Liability | 243 |
| C. Collecting Digital Evidence | 249 |
| III. Conclusion | 253 |
| Part III New Models and Alternative Solutions | 255 |
| Part III | |
| Protection of ‘DRM’ under the WIPO ‘Internet Treaties’: Interpretation, Implementation and Application | 257 |
| <i>Dr Mihály Ficsor</i> | |
| I. Introduction | 257 |
| II. The Provisions of the Internet Treaties on the Two Constituting Elements of DRM Systems (TPMS and RMI) and the Key Issues of Their Interpretation, Implementation and Application | 258 |
| A. Introductory Remarks | 258 |
| B. Technological Protection Measures (TPMs) | 258 |
| 1. Treaty Provisions on TPMs | 258 |
| 2. ‘[A]dequate legal protection . . . against . . . circumvention’: The Treaty Obligations Extend to Provide Protection against ‘Preparatory Acts’ | 259 |

Table of Contents

| | | |
|----|---|-----|
| 3. | ‘[T]echnological measures that are used . . . in connection with . . . exercise of rights . . . and that restrict acts’: The Treaty Obligations to Provide Adequate Protection Cover both ‘Access-Control’ and ‘Copy-Control’ TPMs | 264 |
| 4. | ‘[T]echnological measures that are used by [authors][performers or producers of phonograms]’: The Treaty Obligations also Cover TPMs Applied by Successors in Title and Licensees of Authors, Performers and Producers of Phonograms, Respectively | 268 |
| 5. | ‘[E]ffective Technological Measures’: Infallibility Is Not a Criterion of Effectiveness | 270 |
| 6. | ‘[I]n Connection with the Exercise of Their Rights . . . and That Restricts Acts . . . Which Are Not Authorized by [the Authors] [the Performers or the Producers of Phonograms] Concerned’: The Treaty Obligations to Provide Adequate Protection against Circumvention Are Not Reduced to Acts Linked to Infringements; at the Same Time, They Do Not Result in a New ‘Access Right’ Alien to the Copyright Paradigm | 281 |
| 7. | ‘[I]n connection with the exercise of their rights . . . and that restrict acts . . . which are not . . . permitted by law’: It Is Necessary (and Possible) to Establish Adequate Balance between the Protection of TPMs and the Applicability of Exceptions and Limitations | 287 |
| 8. | ‘[T]echnological measures that are used by [authors][performers or producers of phonograms] in connection with the exercise of their rights [under this Treaty or the Berne Convention][under this Treaty] and that restrict acts, in respect of their [works][performances or phonograms]’: The Anti-circumvention Provisions Do Not Apply to Productions Not Qualifying as Works, Performances or Phonograms neither to Those that Are in the Public Domain | 293 |
| 9. | ‘Effective legal remedies’: The Same Kinds of Remedies Are Needed as in the Case of Infringements and, in Respect of Commercial ‘Preparatory Acts’, as in the Case of Piracy on a Commercial Scale | 296 |

| | | |
|---|--|------------|
| C. | Rights Management Information (RMI) | 297 |
| 1. | Treaty Provisions on RMI; Their Interpretation and Implementation | 297 |
| 2. | Application of RMI as Part of DRM Systems along with TPMs or Alone | 299 |
| III. | Conclusions | 300 |
| Part III | | |
| Codes of Conduct and Copyright Enforcement in Cyberspace | | 303 |
| <i>P. Bernt Hugenholtz</i> | | |
| I. | Introduction | 303 |
| II. | Typology of Self-regulation | 304 |
| | A. Advantages and Disadvantages of Self-regulation | 306 |
| | B. Legal Nature and Normative Effect of Codes of Conduct | 308 |
| | C. Self-regulation in Cyberspace | 309 |
| III. | Background Copyright Law | 311 |
| IV. | Codes of Conduct on Copyright Enforcement | 314 |
| | A. An Assortment of Codes | 314 |
| | B. Assessment | 316 |
| V. | Conclusions | 319 |
| Part III | | |
| Vox Pop: Public Participation in Canadian Copyright Law | | 321 |
| <i>Ysolde Gendreau</i> | | |
| I. | Judicial or Quasi-judicial Process | 322 |
| II. | Legislative Amendments | 326 |
| Bibliography | | 331 |
| Index | | 343 |

Part I

**European Union and
International Policies**