

E-COMMERCE & INTERNET LAW: TREATISE WITH FORMS 2D 2018

Ian C. Ballon

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Key Features of E-Commerce & Internet Law

- ◆ Trends and circuit splits in security breach and data privacy class action suits and their impact on companies seeking to mitigate their risks in 2018
- ◆ New and important case law on mobile contract formation, unconscionability and enforcement of arbitration and class action waiver clauses
- ◆ The most comprehensive analysis of the TCPA's application to text messaging and its impact on litigation found anywhere (including a full explanation of potential inconsistencies in past FCC Orders governing what constitutes an ATDS)
- ◆ Complete analysis of the Cybersecurity Information Sharing Act (CISA), state security breach statutes and regulations, and Defend Trade Secrets Act (DTSA) and their impact on screen scraping and database protection, cybersecurity information sharing and trade secret protection, privacy obligations and the impact that Terms of Use and other internet and mobile contracts may have in limiting the broad exemption from liability otherwise available under CISA
- ◆ The only treatise to provide comprehensive treatment of the secondary liability of Internet, mobile and cloud site owners, service providers, and platforms for user content and misconduct under state and federal law
- ◆ Understanding the laws governing SEO and SEM and their impact on e-commerce vendors, including major developments involving internet advertising and sponsored links
- ◆ Copyright and Lanham Act fair use, patentable subject matter, combating genericide, right of publicity laws governing the use of a person's images and attributes, initial interest confusion, software copyrightability, damages in internet and mobile cases, screen scraping and database protection, the use of icons in mobile marketing, new rules governing fee awards, and the applicability and scope of federal and state safe harbors and exemptions
- ◆ How to enforce judgments against foreign domain name registrants
- ◆ Valuing domain name registrations – now with 10+ years of actual sales data to rely upon
- ◆ Compelling the disclosure of the identity of anonymous and pseudonymous tortfeasors and infringers
- ◆ Comprehensive, freshly revised analysis of the Digital Millennium Copyright Act, the Communications Decency Act (including case law construing these statutes), and online contract formation
- ◆ Making sense of standing decisions after *Spokeo*, as construed by circuit and district courts
- ◆ Analysis of the BOTS Act, Consumer Review Fairness Act, Family Movie Act and more
- ◆ Choosing civil vs. criminal remedies for information theft
- ◆ An action-oriented, transactional approach to compliance with all U.S. state and territorial security breach notification laws
- ◆ Practical tips, checklists and forms that go beyond the typical legal treatise
- ◆ Clear, concise, and practical analysis

TAKE YOUR INTERNET AND MOBILE PRACTICE TO THE NEXT LEVEL

E-Commerce & Internet Law is a comprehensive, authoritative work covering business-to-business and business-to-customer issues, regulatory issues, and emerging trends. It includes practice tips and forms, nearly 10,000 detailed footnotes, and references to hundreds of unpublished court decisions, many of which are not available elsewhere. Its unique organization facilitates finding quick answers to your questions.

The updated new edition offers an unparalleled reference and practical resource. Organized into five sectioned volumes, the 59 chapters cover:

- Sources of Internet Law and Practice
- Intellectual Property
- Licenses and Contracts
- Privacy, Security and Advertising
- The Conduct and Regulation of E-Commerce
- Internet Speech, Defamation, Online Torts and the Good Samaritan Exemption
- Obscenity, Pornography, Adult Entertainment and the Protection of Children
- Theft of Digital Information and Related Internet Crimes
- Liability of Internet Sites and Services (Including Social Networks and Blogs)
- Civil Jurisdiction and Litigation

Distinguishing Features

- ◆ Clear, well written and with a practical perspective based on how issues actually play out in court (not available anywhere else)
- ◆ Exhaustive analysis of circuit splits and changes in the law combined with a common sense, practical approach for resolving legal issues, doing deals, documenting transactions and litigating and winning disputes
- ◆ Covers laws specific to the Internet and explains how the laws of the physical world apply to internet and mobile transactions and liability risks
- ◆ Addresses both law and best practices
- ◆ Comprehensive treatment of intellectual property, data privacy and mobile and Internet security breach law

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Volume 1

Part I. Sources of Internet Law and Practice: A Framework for Developing New Law

- Chapter* 1. Context for Developing the Law of the Internet
2. A Framework for Developing New Law
3. [Reserved]

Part II. Intellectual Property

4. Copyright Protection in Cyberspace
5. Database Protection and Screen Scraping
6. Trademark, Service Mark, Trade Name and Trade Dress Protection in Cyberspace
7. Rights in Internet Domain Names

Volume 2

- Chapter* 8. Internet Patents
9. Intellectual Property Issues in Search Engine Marketing, Optimization and Related Indexing, Information Location Tools and Advertising Practices
10. Misappropriation of Trade Secrets in Cyberspace
11. Employer Rights in the Creation and Protection of Internet-Related Intellectual Property
12. Privacy and Publicity Rights of Celebrities and Others in Cyberspace
13. Idea Protection and Misappropriation
- Part III. Licenses and Contracts**
14. Documenting Internet Transactions: Introduction to Drafting License Agreements and Contracts
15. Drafting Agreements in Light of Model and Uniform Contract Laws: UCITA, the UETA, Federal Legislation and the EU Distance Sales Directive
16. Internet Licenses: Rights Subject to License and Limitations Imposed on Content, Access and Development
17. Licensing Pre-Existing Content for Use Online: Music, Literary Works, Video, Software and User Generated Content Licensing Pre-Existing Content
18. Drafting Internet Content and Development Licenses
19. Website Development and Hosting Agreements
20. Website Cross-Promotion and Cooperation: Co-Branding, Widget and Linking Agreements
21. Obtaining Assent in Cyberspace: Contract Formation for Click-Through and Other Unilateral Contracts
22. Structuring and Drafting Website Terms and Conditions
23. ISP Service Agreements

Volume 3

- Chapter* 24. Software as a Service: On-Demand, Rental and Application Service Provider Agreements
- Part IV. Privacy, Security and Internet Advertising**
25. Introduction to Consumer Protection in Cyberspace
26. Data Privacy
27. Information, Network and Data Security
28. Advertising in Cyberspace

Volume 4

- Chapter* 29. Email and Text Marketing, Spam and the Law of Unsolicited Commercial Email and Text Messaging
30. Online Gambling

Part V. The Conduct and Regulation of Internet Commerce

31. Online Financial Transactions and Payment Mechanisms
32. Online Securities Law
33. Taxation of Electronic Commerce
34. Antitrust Restrictions on Technology Companies and Electronic Commerce
35. State and Local Regulation of the Internet
36. Best Practices for U.S. Companies in Evaluating Global E-Commerce Regulations and Operating Internationally

Part VI. Internet Speech, Defamation, Online Torts and the Good Samaritan Exemption

37. Defamation, Torts and the Good Samaritan Exemption (47 U.S.C.A. § 230)
38. Tort and Related Liability for Hacking, Cracking, Computer Viruses, Disabling Devices and Other Network Disruptions
39. E-Commerce and the Rights of Free Speech, Press and Expression In Cyberspace

Part VII. Obscenity, Pornography, Adult Entertainment and the Protection of Children

40. Child Pornography and Obscenity
41. Laws Regulating Non-Obscene Adult Content Directed at Children
42. U.S. Jurisdiction, Venue and Procedure in Obscenity and Other Internet Crime Cases

Part VIII. Theft of Digital Information and Related Internet Crimes

43. Detecting and Retrieving Stolen Corporate Data
44. Criminal and Related Civil Remedies for Software and Digital Information Theft
45. Crimes Directed at Computer Networks and Users: Viruses and Malicious Code, Service Disabling Attacks and Threats Transmitted by Email

Volume 5

- Chapter* 46. Identity Theft
47. Civil Remedies for Unlawful Seizures
- Part IX. Liability of Internet Sites and Service (Including Social Networks and Blogs)**
48. Assessing and Limiting Liability Through Policies, Procedures and Website Audits
49. Website Owner, Cloud Storage, and Service Provider Liability for User Generated Content and Misconduct
50. Strategies for Managing Third-Party Liability Risks From User Content and Misconduct for Different Types of Website and Cloud Owners, Operators and Service Providers
51. Web 2.0 Applications: Social Networks, Blogs, Wiki and UGC Sites
- Part X. Civil Jurisdiction and Litigation**
52. General Overview of Cyberspace Jurisdiction
53. Personal Jurisdiction in Cyberspace
54. Venue and the Doctrine of Forum Non Conveniens
55. Choice of Law in Cyberspace
56. Internet ADR
57. Internet Litigation Strategy and Practice
58. Electronic Business and Social Network Communications in the Workplace, in Litigation and in Corporate and Employer Policies
59. Use of Email in Attorney-Client Communications

“Should be on the desk of every lawyer who deals with cutting edge legal issues involving computers or the Internet.”

Jay Monahan

General Counsel, ResearchGate

ABOUT THE AUTHOR

IAN C. BALLON

Ian Ballon is Co-Chair of Greenberg Traurig LLP's Global Intellectual Property and Technology Practice Group and is a litigator based in the firm's Silicon Valley and Los Angeles offices. He defends data privacy, security breach, TCPA, and other Internet and mobile class action suits and litigates copyright, trademark, patent, trade secret, right of publicity, database and other intellectual property matters, including disputes involving Internet-related safe harbors and exemptions and platform liability.



Mr. Ballon was the recipient of the 2010 Vanguard Award from the State Bar of California's Intellectual Property Law Section. He also has been recognized by *The Los Angeles and San Francisco Daily Journal* as one of the Top 75 Intellectual Property litigators and Top 100 lawyers in California.

In 2017 Mr. Ballon was named a "Groundbreaker" by *The Recorder* at its 2017 Bay Area Litigation Departments of the Year awards ceremony and was selected as an "Intellectual Property Trailblazer" by the *National Law Journal*.

Mr. Ballon was named as the Lawyer of the Year for information technology law in the 2018, 2016 and 2013 editions of *The Best Lawyers in America* and is listed in Legal 500 U.S., The Best Lawyers in America (in the areas of information technology and intellectual property) and Chambers and Partners USA Guide in the areas of privacy and data security and information technology. He also serves as Executive Director of Stanford University Law School's Center for E-Commerce in Palo Alto.

Mr. Ballon received his B.A. *magna cum laude* from Tufts University, his J.D. *with honors* from George Washington University Law School and an LLM in international and comparative law from Georgetown University Law Center. He also holds the C.I.P.P./U.S. certification from the International Association of Privacy Professionals (IAPP).

In addition to *E-Commerce and Internet Law: Treatise with Forms 2d edition*, Mr. Ballon is the author of *The Complete CAN-SPAM Act Handbook* (West 2008) and *The Complete State Security Breach Notification Compliance Handbook* (West 2009), published by Thomson West (www.IanBallon.net).

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Contributing authors: Parry Aftab, Ed Chansky, Francoise Gilbert, Tucker McCrady, Josh Raskin, Tom Smedinghoff and Emilio Varanini.

NEW AND IMPORTANT FEATURES FOR 2018

- > An exhaustive look at the DMCA, its legislative history and case law construing it (including why a significant circuit court opinion from 2017 is wrongly decided)
- > A complete analysis of the federal Defend Trade Secrets Act, including areas where state trade secret laws may provide greater remedies
- > The most extensive and sophisticated analysis of standing in cybersecurity breach cases available anywhere – explaining circuit splits and trends in the law that would not be apparent if you merely lined up the leading cases and tried to distinguish them based on their facts
- > Understanding the 9th circuit's "duty to warn" exception to the CDA and the interplay between the CDA, Defend Trade Secrets Act (DTSA), Cyberspace Information Security Act (CISA) and FREE SPEECH Act
- > Comparing "but for" and proximate cause analysis under the CDA and DMCA
- > ECPA limitations on the discovery in civil litigation of the contents of internet, mobile and social media communications, both in the U.S. and overseas
- > Fully updated analysis of state security breach laws in the 48 states that have them and in D.C., Puerto Rico and Guam—analyzed holistically the way a practitioner would, rather than merely by chart or graph
- > New analysis of the single publication rule as applied to websites, links and uses on social media
- > Important new case law on secondary patent, copyright, and trademark liability for website owners and e-commerce vendors (including an analysis of the obstacles to imposing patent liability on e-commerce sales platforms)
- > How sponsored link and Lanham Act case law may impact a website's own search practices
- > Cutting through the jargon to make sense of *clickwrap*, *browsewrap*, *scrollwrap* and *sign-in wrap* agreements (and what many courts and lawyers get wrong about online contract formation)
- > The most comprehensive TCPA texting case and regulatory analysis available anywhere, including the only exhaustive analysis of which of the hundreds of TCPA decisions are correctly decided and which are wrongly decided -- and why
- > New strategies for database protection, the use of AI/bots, and ethical screen scraping
- > Click fraud cases and trends
- > Revisiting the parameters of *Dastar* and efforts to impose contributory liability for dilution and false advertising
- > Exhaustive analysis of case law, trends and circuit splits under the VPPA, TCPA, ECPA, CFAA and other federal statutes
- > The only treatise to track extensively changes in opinions withdrawn and replaced by the Ninth Circuit (and less frequently other courts) to understand the contours of the law and what remains unresolved
- > EU Privacy Law (by Francoise Gilbert)
- > Music licensing (updated by Tucker McCrady)
- > Mobile, Internet and Social Media contests & promotions (updated by Ed Chansky)
- > Conducting a risk assessment and creating a Written Information Security Assessment Plan (WISP) (by Thomas J. Smedinghoff)

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