

E-COMMERCE & INTERNET LAW: TREATISE WITH FORMS 2D 2022

Ian C. Ballon

2022
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Key Features of E-Commerce & Internet Law

- ◆ AI, ML, screen scraping and data portability
- ◆ Antitrust in the era of techlash
- ◆ The CPRA, Virginia, Colorado and Nevada privacy laws, GDPR, California IoT security statute, state data broker laws, and other privacy and cybersecurity laws
- ◆ Software copyrightability and fair use after *Google v. Oracle*
- ◆ Mobile and online contract formation, unconscionability and enforcement of arbitration and class action waiver clauses in an era of mass arbitration
- ◆ TCPA law and litigation after *Facebook v. Duguid* - the most comprehensive analysis of the statute, regulations, and conflicting case law found anywhere
- ◆ The Cybersecurity Information Sharing Act (CISA), state security breach statutes and regulations, and the Defend Trade Secrets Act (DTSA) -- and their impact on screen scraping and database protection, cybersecurity information sharing and trade secret protection, & privacy
- ◆ Platform moderation and liability, safe harbors, and defenses (including the CDA and DMCA)
- ◆ Dormant Commerce Clause restrictions on state law regulation of online and mobile commerce
- ◆ The law of SEO and SEM – and its impact on e-commerce vendors
- ◆ Defending cybersecurity breach and data privacy class action suits – case law, trends & strategy
- ◆ IP issues including Copyright and Lanham Act fair use, *Rogers v. Grimaldi*, patentable subject matter, negative trade secrets, rights of publicity laws governing the use of a person's images and attributes, initial interest confusion, software copyrightability, damages in internet and mobile cases, the use of hashtags in social media marketing, new rules governing fee awards, and the applicability and scope of federal and state safe harbors and exemptions
- ◆ Online anonymity and pseudonymity – state and federal laws governing permissible disclosures and subpoenas
- ◆ Sponsored links, embedded links, #hashtags, and internet, mobile and social media advertising
- ◆ Enforcing judgments against foreign domain name registrants
- ◆ Valuing domain name registrations from sales data
- ◆ Applying the First Sale Doctrine to virtual goods
- ◆ Exhaustive statutory and case law analysis of the Digital Millennium Copyright Act, the Communications Decency Act (including exclusions for certain IP & FOSTA-SESTA), the Video Privacy Protection Act, and Illinois Biometric Privacy Act
- ◆ Analysis of the CLOUD Act, BOTS Act, SPEECH Act, Consumer Review Fairness Act, N.J. Truth-in-Consumer Contract, Warranty and Notice Act, Family Movie Act and more
- ◆ Click fraud
- ◆ Copyright and Lanham Act fair use
- ◆ Practical tips, checklists and forms that go beyond the typical legal treatise
- ◆ Clear, concise, and practical analysis

AN ESSENTIAL RESOURCE FOR ANY INTERNET AND MOBILE, INTELLECTUAL PROPERTY OR DATA PRIVACY/ AI/ CYBERSECURITY PRACTICE

E-Commerce & Internet Law is a comprehensive, authoritative work covering law, legal analysis, regulatory issues, emerging trends, and practical strategies. 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
- Data Privacy, Cybersecurity 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
- Platform liability for Internet Sites and Services (Including Social Networks, Blogs and Cloud services)
- 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
- ◆ Includes the hottest issues, such as IP and privacy aspects of artificial intelligence & machine learning, social media advertising, cloud storage, platform liability, and more!
- ◆ Comprehensive treatment of intellectual property, data privacy and mobile and Internet security breach law

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. Data Scraping, Database Protection, and the Use of Bots and Artificial Intelligence to Gather Content and Information
 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. Unique Intellectual Property Issues in Search Engine Marketing, Optimization and Related Indexing, Information Location Tools and Internet and Social Media 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 Submission, 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: The Federal eSign Statute, Uniform Electronic Transactions Act, UCITA, and the EU Distance Selling 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. Cybersecurity: 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. State and Local Sales and Use Taxes on Internet and Mobile Transactions
 34. Antitrust Restrictions on Technology Companies and Electronic Commerce
 35. Dormant Commerce Clause and Other Federal Law Restrictions on 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. Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct
 50. Cloud, Mobile and Internet Service Provider Compliance with Subpoenas and Court Orders
 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

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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 in the firm's Silicon Valley Los Angeles and Washington, DC offices. He defends data privacy, cybersecurity breach, AdTech, TCPA, and other Internet and mobile class action suits and litigates copyright, trademark, patent, trade secret, right of publicity, database, AI and other intellectual property cases, including disputes involving safe harbors and exemptions, platform liability and fair use.



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 Intellectual Property litigators in every year the list has been published (2009-2021), Top Cybersecurity and Artificial Intelligence (AI) lawyers, and Top 100 lawyers in California.

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 selected as the Lawyer of the Year for information technology law in the 2022, 2021, 2020, 2019, 2018, 2016 and 2013 editions of *The Best Lawyers in America* and is listed in Legal 500 U.S., Law Dragon and Chambers and Partners USA Guide. He also serves as Executive Director of Stanford University Law School's Center for the Digital Economy.

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).

Mr. Ballon is also 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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NEW AND IMPORTANT FEATURES FOR 2022

- > **Antitrust in the era of techlash** (chapter 34)
- > **Platform moderation and liability, safe harbors and defenses** (ch. 49, 4, 6, 8, 37)
- > **Privacy and IP aspects of Artificial Intelligence (AI) and machine learning** (ch. 5, 26)
- > **How *TransUnion v. Ramirez* (2021) changes the law of standing in cybersecurity breach, data privacy, AdTech and TCPA class action suits.**
- > **90+ page exhaustive analysis of the CCPA and CPRA, all statutory amendments and final regulations, and how the law will change under the CPRA – the most comprehensive analysis available!** (ch 37)
- > **Text and other mobile marketing under the TCPA following the U.S. Supreme Court's ruling in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021) – and continuing pitfalls companies should avoid to limit exposure**
- > **Software copyrightability and fair use in light of the U.S. Supreme Court's 2021 decision in *Google LLC v. Oracle America, Inc.*, 141 S. Ct. 1183 (2021)** (ch 4)
- > **Rethinking 20 years of database and screen scraping case law in light of the U.S. Supreme Court's opinion in *Van Buren v. United States*, 141 S. Ct. 1648 (2021)** (ch5)
- > **FOSTA-SESTA and ways to maximize CDA protection** (ch 37)
- > **IP aspects of the use of #hashtags in social media** (ch 6)
- > **The CLOUD Act** (chapter 50)
- > **Virginia, Colorado and Nevada privacy laws** (ch 26)
- > **Applying the single publication rule to websites, links and uses on social media** (chapter 37)
- > **Digital economy litigation strategies**
- > **Circuit-by-circuit, claim-by-claim analysis of CDA opinions**
- > **How new Copyright Claims Board proceedings will disrupt DMCA compliance for copyright owners, service providers and users** (ch 4)
- > **Website and mobile accessibility under the ADA and state laws** (chapter 48)
- > **Online and mobile Contract formation – common mistakes by courts and counsel** (chapter 21)
- > **Updated Defend Trade Secrets Act and UTSA case law** (chapter 10)
- > **Drafting enforceable arbitration clauses and class action waivers** (with new sample provisions) (chapter 22)
- > **AdTech law** (chapter 28, Darren Abernethy)
- > **The risks of being bound by the CASE Act's ostensibly voluntary jurisdiction over small copyright cases**
- > **Rethinking approaches to consumer arbitration clauses in light of mass arbitration and case law on representative actions.**
- > **Dormant Commerce Clause challenges to state privacy and other laws – explained**
- > **First Amendment protections and restrictions on social media posts and the digital economy – important new case law**
- > **The GDPR, ePrivacy Directive and transferring data from the EU/EEA** (by Francoise Gilbert and Viola Bensinger) (ch. 26)
- > **Patent law** (updated by Josh Raskin) (chapter 8)
- > **Idea protection & misappropriation** (ch 13)
- > **Revisiting links, embedded links, sponsored links, and SEO/SEM practices and liability** (chapter 9)
- > **eSIGN case law** (chapter 15)

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