

How to Use This Treatise Most Effectively

This book mirrors the intuitive research structure of the World Wide Web. Unlike a traditional treatise, there is no index at the back of the book where users could spend time trying to locate the right section. If you use the treatise as suggested below, you will find answers to your questions much more quickly.

Like the Web, the information in this treatise is organized into successive levels of specificity to allow users to quickly search for and identify potentially relevant material and then drill down to specific resources. Like the Web, there are extensive links throughout the treatise (in the form of cross-references in footnotes) to allow you to quickly navigate to exactly the right location for the material you are looking for.

To start your search, please refer to the chapter list at the front of the treatise, which identifies the titles of the 59 chapters contained in this four volume set. The chapters themselves are organized into sections to better assist you in locating the right place to start. The structure of sections and chapters is described in greater detail below.

Once you have identified a chapter that potentially may address the issues you are looking for, you have two alternative ways to locate specific sections. The first section of every chapter identifies exactly what is covered in the chapter and directs readers to the specific sections where more detailed information may be found. Section 01 of each chapter typically also will identify other chapters that contain relevant information, to point you in the right direction if the chapter list alone did not bring you to the right place. In addition, detailed Contents for each page may be found at the beginning of each chapter.

Alternatively, you will find in the front of the book, behind the chapter list in the Summary of Contents, a detailed list of Contents that shows the section and sub-section headings for each chapter, which will help you locate the information you need. Rather than reading the first section of a chapter, you may refer to the detailed section list to compare the contents of different chapters and determine which one contains the information you need.

Throughout the work, there are thousands of footnotes that cross-reference other sections of the treatise so that if at any point in time you find yourself in the wrong place, a footnote cross-reference, like a hypertext link, will direct you back to the proper location.

Thus, for example, if you are researching an issue involving

privacy, after you identify chapters 12 and 26 as potentially relevant you might start by reviewing section 26.01 (data privacy) or 12.01 (privacy and publicity), both of which clarify that data privacy issues are addressed in chapter 26 and privacy-related common law torts and state and federal rights of publicity are considered in chapter 12. Alternatively, you could review the more detailed list of Contents found behind the chapter list Summary of Contents at the front of the book to compare the contents of both chapters. Or you could simply proceed to one of the chapters and review the detailed chapter Contents set forth as the very first page of each chapter. However you proceed, footnote cross-references will direct you back to the specific sections in either chapter 12 or 26 that addresses particular data privacy and tort and right of publicity issues.

You should think of the chapter list as a series of 59 links that in turn link back to sections and sub-sections where more detailed information may be found. While section 01 of each chapter provides an overview and cross-references, subsequent sections and sub-sections provide more detailed analysis.

The treatise is organized into ten Parts (with checklists and forms integrated throughout the text, rather than placed in a separate appendix volume) to make it easier for users to refer to the chapter list and quickly begin their research.

Part I contains background material and information. Chapter 1 outlines the nature of the Internet with particular reference to characteristics that have legal significance. Chapter 2 provides a framework for the development of Internet law, while chapter 3 addresses online resources that may be used in a lawyer's practice.

Part II focuses on intellectual property laws. Both traditional and novel uses of intellectual property are considered in Part III, including copyrights (chapter 4), trademarks (chapter 6), publicity rights (chapter 12), patents (chapter 8) and trade secrets (chapter 10), hybrid protections afforded otherwise unprotectable ideas (chapter 13) or databases (including the related issue of screen scraping) (chapter 5), ownership of IP, including employee rights and obligations (chapter 11), and Internet-specific intellectual property issues involving domain names (chapter 7), inevitable disclosure (chapter 11) and links, frames, metatags, key words and other tools to drive or divert traffic to websites (chapter 9). Chapter 9 focuses in particular on search engine practices and information distribution systems, including the use of bots—or automated software robots. Part II also provides important background analysis for understanding, structuring and drafting most forms of

Web-based contracts, which typically have some IP component and frequently are fashioned in part as intellectual property licenses (given that a website is merely comprised of a software application and content).

Part III addresses Internet contracts, licenses and agreements, including website Terms and Conditions (chapter 22), ISP service agreements (chapter 23), On-demand (ASP) software agreements or software as a service (chapter 24), software and other development and distribution agreements (chapter 18), website development and hosting contracts (chapters 19), and Web linking, co-branding and cross-promotional agreements (chapter 20). Chapter 14 provides an overview of this Part of the book. Chapter 15 addresses electronic signature issues, model codes and the EU sales directive. Chapter 16 analyzes Internet licenses, including the first sale and misuse doctrines. Chapter 17 covers licenses for specific forms of content, including music, video, literary works and User Generated Content. Chapter 21 addresses formation issues for unilateral contracts.

Part IV focuses on Internet advertising and promotion, privacy and security, all of which are subject to FTC regulation. Chapter 25 addresses consumer protection, including class action suits. Chapter 26 covers data privacy, while chapter 27 analyzes data security. Chapter 28 addresses Internet advertising, while chapter 29 covers spam, including the CAN-SPAM Act, which regulates but does not prohibit dissemination of unsolicited commercial email.

Part V groups together chapters that address the conduct and regulation of e-commerce. Chapter 31 analyzes online financial transactions. Chapter 32 covers securities law. Chapter 33 focuses on Internet taxation. Chapter 34 addresses antitrust law. Chapter 35 focuses on state and local regulation of the Internet, while chapter 36 outlines strategies for U.S. companies to operate online internationally.

Part VI analyzes Internet speech, including the scope of First Amendment protections online (chapter 39), Internet defamation (chapter 37) and the extent to which third party federal, state and local laws may be preempted in cyberspace by the Good Samaritan exemption to the Telecommunications Act of 1996 (chapter 37). Chapter 37 also analyzes anonymity and pseudonymity and ways to compel the disclosure of the identity of pseudonymous tortfeasors. Chapter 38 explores tort liability for hacking and computer viruses.

Part VII extends the discussion of Internet speech to the world of adult content and the protection of children. Part VII addresses the

extent of permissible regulation of adult material, as well as criminal laws on child pornography and obscenity (chapter 40), regulating non-obscene adult content directed at children (chapter 41) and jurisdiction and venue in criminal cases (chapter 42).

Part VIII focuses on computer crimes (other than those involving child pornography or obscene material). Criminal laws are addressed from the perspective of a business seeking remedies for the theft or loss of digital information. Chapter 43 analyzes the trade-offs between available criminal and civil remedies and identifies considerations for businesses to detect, and ultimately prevent, Internet crimes. Chapter 44 enumerates specific Internet crimes for the theft of software and digital information. Chapter 45 considers crimes directed at networks, such as viruses and malicious code. Chapter 46 addresses phishing and identity theft. Chapter 47, in turn, considers civil remedies for unlawful seizures.

Part IX provides a framework for evaluating and reducing liability. Chapter 48 focuses on a site owner's own liability and includes a checklist for conducting a website audit. Chapter 49 provides an overview of third-party liability risks, including exposure for User Generated Content, and analyzes trends in the law. Chapter 50, in turn, assesses the unique problems faced by, and legal obligations imposed on, different types of Internet businesses and suggests alternative practical approaches to reduce liability. Chapter 50 also addresses linking and site owner and service provider obligations to respond to subpoenas. Chapter 51, in turn, considers additional issues relevant to blogs, wiki and social networks.

Part X analyzes jurisdiction and litigation. Chapter 52 provides an overview of regulatory and judicial jurisdiction for conduct in cyberspace. Chapter 53 extensively considers personal jurisdiction. Other chapters address venue (chapter 54), choice of law (chapter 55) and Alternative Dispute Resolution procedures (chapter 56). Chapter 57 more broadly considers Internet litigation, including novel claims, as well as providing a list of trial judges and the important Internet law decisions that they have rendered. Chapter 58 addresses email and electronic communications, including electronic discovery and company email, communication and blog policies. Finally, chapter 59 discusses the use of electronic communications for attorney-client communications.

This book—like the Internet itself—is intended to be dynamic and interactive. I encourage readers to alert me (at Ballon@GTlaw.com) to perceived infirmities in this work, both large

and small, and to contribute to the development of the common law of the Internet by submitting new information, unreported decisions or forms for possible inclusion in future updates (with attribution).

