

# CYBER LAW IN MEXICO

THIRD EDITION

CRISTOS VELASCO



Wolters Kluwer

# **Cyber Law in Mexico**

**Third Edition**

**Cristos Velasco**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Cyber Law.

General Editors: Roger Blanpain, Frank Hendrickx  
Volume Editor: Jos Dumortier



**Wolters Kluwer**

*Published by:*

Kluwer Law International B.V.  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.wklawbusiness.com](http://www.wklawbusiness.com)

*Sold and distributed in North, Central and South America by:*

Wolters Kluwer Legal & Regulatory U.S.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.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](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper*

ISBN 978-90-411-6855-9

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

© 2016, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal & Regulatory U.S., 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Website: [www.wklawbusiness.com](http://www.wklawbusiness.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

# Table of Contents

The Author	3
List of Abbreviations	27
Preface to the Fifth Edition	31
Preface to the Fourth Edition	33
Preface to the Third Edition	35
Preface to the Second Edition	37
Preface to the First Edition	39
Foreword to the Fifth Edition	41
General Introduction	43
Chapter 1. General Background and Relevant Statistics	46
§1. GEOGRAPHY	46
§2. DEMOGRAPHIC AND CULTURAL COMPOSITION	46
§3. POLITICAL SYSTEM	47
§4. POPULATION AND LIFE EXPECTANCY STATISTICS	49
Chapter 2. Telecommunications Infrastructure	50
§1. INTERNATIONAL INDICATORS	51
I. Internet and Broadband Use	52
II. The Web Index of the World Wide Web Foundation (W3C)	53
§2. NATIONAL STATISTICS	54
I. Telephony	54

## Table of Contents

II. Fixed Telephony	55
III. Long Distance Telephony	55
IV. Mobile Telephony	55
V. Mobile Radio-Localization (Paging and Trunking)	56
VI. Television and Restricted Audio	56
VII. Personal Computers	56
VIII. Internet and Broadband	57
IX. Internet Hosting	58
§3. SATELLITE SERVICE	58
§4. TELECOMMUNICATIONS INVESTMENT	60
Chapter 3. The Information and Communications Technology Market	61
Chapter 4. Electronic Commerce Facts and Figures	62
§1. ELECTRONIC COMMERCE	62
§2. DOMAIN NAME REGISTRY	63
§3. ONLINE SECURITY	65
Chapter 5. Competitiveness	66
§1. INTERNATIONAL RANKINGS	66
§2. THE CURRENT ENVIRONMENT	67
§3. TELECOMMUNICATIONS DISPUTE BEFORE THE WTO	68
§4. THE NATIONAL DIGITAL STRATEGY	70
Chapter 6. E-Government	75
§1. THE PROJECT MEXICO CONNECTED	75
§2. E-MEXICO NATIONAL SYSTEM	75
§3. THE E-GOVERNMENT WEBSITE	76
I. The Inter-Secretariat Commission for the Development of E-Government	77
§4. THE TRAMITANET WEBSITE	78

## Table of Contents

§5.	THE COMPRANET WEBSITE	79
§6.	THE DECLARANET WEBSITE	80
§7.	THE CAPACINET WEBSITE	81
§8.	THE COMMERCIAL PUBLIC REGISTRY	81
§9.	ELECTRONIC TAX FILING	83
§10.	THE GOVERNMENT REGISTRY OF ACCREDITED INDIVIDUALS	84
§11.	THE FINAL REPORT OF FORMER PRESIDENT VICENTE FOX ON DIGITAL GOVERNMENT	85
§12.	MEXICO'S INITIATIVES TO PROVIDE FREE INTERNET ACCESS	86
§13.	INTERNATIONAL E-GOVERNMENT INDICATORS	87
	Part I. Regulation of the ICT Market	89
	Chapter 1. Legal and Regulatory Framework of the Telecommunications Sector	89
§1.	BACKGROUND	89
§2.	NAFTA CHAPTER ON TELECOMMUNICATIONS	93
§3.	MAIN SCOPE OF THE FEDERAL LAW ON TELECOMMUNICATIONS AND BROADCASTING	93
§4.	OBJECTIVES AND REGULATORY PRINCIPLES	93
§5.	FEDERAL JURISDICTION CLAUSE	94
§6.	FOREIGN INVESTMENT	94
§7.	THE NATIONAL REGULATORY AUTHORITIES	95
	I. About the Federal Telecommunications Institute IFT	95
	II. About the SCT	95
	III. About the Evaluation Committee	97
	IV. Organization and Functioning of IFT	97
	V. Government Cooperation for the Protection of Consumers	98
§8.	ACTIVITIES EXCLUSIVELY RESERVED TO THE MEXICAN STATE	99

## Table of Contents

§9.	ADMINISTRATION AND CLASSIFICATION OF THE RADIO-ELECTRICAL SPECTRUM	99
§10.	CONCESSIONS AND LICENSES	101
	I. Granting of Concessions	102
§11.	PUBLIC REGISTRY OF TELECOMMUNICATIONS	105
§12.	COLLABORATION WITH THE NATIONAL JUSTICE SYSTEM	106
§13.	CONSUMER RIGHTS AND MECHANISMS OF PROTECTION	106
	I. Rights of Users with Disabilities	108
	II. Rates for Commercial or Social Use	108
	III. Conservation of Phone Numbers	109
§14.	UNIVERSAL COVERAGE	109
§15.	BROADCASTING AND AUDIOVISUAL REGULATION	109
§16.	VERIFICATION AND SANCTIONS	110
	I. Verification	110
	II. Sanctions	110
§17.	LEGAL REMEDIES	112
§18.	THE NATIONAL NUMBERING PLAN	112
	I. General Purpose	112
	II. The Fundamental Technical Plan of Numbering	112
§19.	THE NATIONAL SIGNALING PLAN	113
	I. General Purpose	113
	II. The Fundamental Technical Plan of Signaling	113
§20.	NATIONAL CALLING PARTY PAYS	114
Chapter 2.	Regulation of Competition in the ICT Market	116
§1.	BACKGROUND	116
§2.	THE COMPETITION FRAMEWORK IN TELECOMMUNICATIONS	117

## Table of Contents

I.	International Trade Treaties	117
	A. NAFTA	117
	B. The EU–Mexico Agreement	118
II.	Federal Legislation	118
	A. The Federal Law on Telecommunications and Broadcasting	118
III.	Regulations, Rules and Agreements	120
	A. Regulation of Communication via Satellite	120
	B. Rules of Local Telephony	121
	C. Agreement of Convergence of Fixed Services of Local Telephony and TV and/or Restricted Audio Provided through Wire and Wireless Public Networks	121
§3.	OPERATOR WITH SIGNIFICANT MARKET POWER	122
	I. Intervention of Cofece in the Granting of Concessions and Licenses and Right Assignments	122
	II. The Resolution on Telmex’s Dominance	122
§4.	RECENT FINES ESTABLISHED BY COFECE	123
§5.	THE JUDGMENT OF THE SCJN ON INTERCONNECTION RATES	124
§6.	GENERAL REMARKS	124
Chapter 3.	Legal Status of Standardization	126
§1.	GENERAL BACKGROUND	126
§2.	STANDARDIZATION AND CERTIFICATION ORGANIZATIONS	126
§3.	CONFORMITY ASSESSMENT AND MUTUAL RECOGNITION UNDER NAFTA	127
§4.	HOMOLOGATION OF TELECOMMUNICATIONS EQUIPMENT	128
Part II.	Protection of Intellectual Property in the ICT Sector	131
Chapter 1.	Application of Copyright in the Area of ICT	131
§1.	CONSTITUTIONAL PROTECTION	131
§2.	INTERNATIONAL AGREEMENTS ON INTELLECTUAL PROPERTY AND AUTHORS RIGHTS	131
	I. International Agreements on Intellectual Property	132



## Table of Contents

II.	International Agreements on Authors Rights	132
III.	Intellectual Property under NAFTA	132
§3.	SCOPE OF APPLICATION	134
§4.	CONDITIONS OF PROTECTION	134
§5.	LIMITATIONS IN THE SCOPE OF PROTECTION	134
Chapter 2.	Legal Protection of Software	136
§1.	SUBJECT-MATTER OF PROTECTION	136
§2.	LIMITATIONS ON THE SCOPE OF PROTECTION	136
§3.	TERM OF THE PROTECTION	137
§4.	COMPLEMENTARY PROVISIONS	137
§5.	OTHER PROHIBITIONS	137
§6.	PAYMENT OF ROYALTIES	137
Chapter 3.	Legal Protection of Databases	139
§1.	SUBJECT-MATTER OF PROTECTION	139
§2.	TERM OF PROTECTION	139
§3.	SCOPE OF EXCLUSIVE RIGHTS	139
Chapter 4.	Legal Protection of Computer Chips	140
§1.	SUBJECT-MATTER OF PROTECTION	140
§2.	TERM OF PROTECTION	140
§3.	SCOPE OF EXCLUSIVE RIGHTS	140
§4.	LIMITATIONS ON THE SCOPE OF PROTECTION	141
Chapter 5.	Other Intellectual Property Rights in the ICT Sector	142
§1.	TRADEMARKS LICENSES	142
§2.	TRACED SCHEME LICENSES	142

## Table of Contents

Chapter 6.	Internet Domain Name Registration	143
§1.	GENERAL OVERVIEW OF THE CCTLD.MX	143
§2.	THE LEGAL FRAMEWORK OF DOMAIN NAMES	143
§3.	CHARACTERISTICS OF DOMAIN NAMES	144
§4.	CONDITIONS FOR REGISTRATION OF DOMAIN NAMES	145
§5.	REQUIREMENTS FOR REGISTRATION OF DOMAIN NAMES	145
§6.	PAYMENT OBLIGATIONS	146
§7.	MODIFICATIONS AND AMENDMENTS	146
§8.	CANCELLATION AND REMOVAL	147
	I. Cancellation	147
	II. Removal	147
§9.	POLICY ON DOMAIN NAME DISPUTES	148
	I. Disputes under the Domain General Policies of NIC-MX	148
	II. Dispute Resolution Policy for the.MX Domain Names	148
	III. Regulation of the Dispute Resolution Policy for the.MX Domain Names	151
§10.	DISPUTE OVER DOMAIN NAMES	151
	I. Disputes Administered by WIPO	151
	II. Disputes before IMPI	151
Chapter 7.	The Anti-Counterfeiting Trade Agreement ( ACTA)	152
§1.	GENERAL BACKGROUND	152
§2.	THE SIGNATURE OF ACTA IN MEXICO	152
§3.	MULTISTAKEHOLDER WORKING GROUP ON ACTA	153
Part III.	ICT Contracts	155
Chapter 1.	Software Contracts	156
Chapter 2.	Government Contracts	157

## Table of Contents

Chapter 3. Electronic Contracts	158
Part IV. Electronic Transactions	159
Chapter 1. Legal Status of Electronic Transactions	159
§1. LEGAL FRAMEWORK	159
I. The Decree of 29 May 2000	159
§2. RULES FOR THE FORMATION OF AN ELECTRONIC AGREEMENT	160
I. Contract Formation	160
II. Offer and Acceptance	160
III. Functional Equivalent Requirement	161
IV. Recognition of Electronic Means by Public Attestants	161
§3. RECOGNITION OF DATA MESSAGES IN COMMERCIAL ACTS	162
I. Scope of Application and Interpretation	162
II. Legal Recognition	162
III. Attribution	163
IV. Legal Presumption	163
V. Time and Place of Receipt	164
A. Time of Receipt	164
B. Place of Receipt	164
VI. Acknowledgement of Receipt	164
VII. Preservation of Original Data Messages	165
§4. DATA PRESERVATION OBLIGATIONS	165
I. The Mexican Official Norm for Preservation of Data Messages	166
A. Scope of Applicability	166
B. Preservation Method	166
C. Migration of Information	167
II. Legal Challenge against the Official Norm for Preservation of Data Messages	167
§5. EVIDENTIAL WEIGHT OF DATA MESSAGES	168
I. Evidential Weight of Data Messages under the FCCP	168
II. Evidential Weight of Data Messages under the Code of Commerce	169
III. Evidential Weight of Data Messages in Other Laws and Regulations	169

## Table of Contents

A. Financial Transactions	169
B. Administrative Procedures	170
C. Taxation	170
Chapter 2. Regulations for Electronic Commerce and Users of Financial Services	171
§1. GENERAL BACKGROUND	171
§2. REGULATION OF ELECTRONIC COMMERCE FOR CONSUMERS	171
I. Obligations of Suppliers	171
II. Rights of Online Consumers	172
A. Contract Execution	172
B. Right of Information	172
III. Penalties for Non-compliance	172
§3. VOLUNTARY CODES AND TRUSTMARKS	173
I. Voluntary Codes	173
II. Industry Trustmarks	173
A. Legal Requirements	173
B. Government Endorsement	174
§4. REGULATION OF USERS OF FINANCIAL SERVICES	174
I. General Scope of the Law	174
II. Awareness Information	174
§5. APPLICABLE LAW AND JURISDICTION FOR CONSUMERS	175
I. Jurisdiction for Consumer Contracts	175
II. Jurisdiction by Subject-Matter	175
III. Applicable Law	175
IV. Cross-Border Jurisdiction	176
§6. UNSOLICITED COMMUNICATIONS AND MARKETING PRACTICES	176
I. General Background	176
II. Prohibition and Opt-Out Requirement	177
III. Marketing and Advertising Practices	177
A. Marketing and Advertising Information for Consumers	177
B. Information Disclosures and Opt-Out Clause	178
C. Information Purpose and Public Registry of Consumers for Personal Data	178
IV. Electronic Complaints	178

## Table of Contents

V.	Public Registry of Consumers	179
VI.	Penalties and Fines	183
	A. Criteria to Establish Penalties	183
VII.	Anti-Spam Complaints and Cases	183
VIII.	Anti-Spam Law Initiatives	183
IX.	General Remarks	184
Chapter 3.	Regulation of Electronic Signatures and Certification Providers	186
§1.	INTRODUCTION	186
§2.	DEFINITION OF ELECTRONIC SIGNATURE	186
§3.	LEGAL VALIDITY OF ELECTRONIC SIGNATURES	186
§4.	ADVANCED AND RELIABLE ELECTRONIC SIGNATURES	187
	I. Assessment of Advanced and Reliable Electronic Signatures	187
§5.	CONDUCT OF THE SIGNATORY	187
§6.	CERTIFICATION SERVICE PROVIDERS	188
	I. Applicable Framework	188
	II. Definition	188
	III. Authorization, Terms and Conditions for Accreditation	189
	A. Authorization	189
	B. Purpose of CSPs	189
	C. Authority and Conditions for Accreditation before SE	189
	D. Term of Accreditation	190
	IV. Obligations of CSPs	190
	V. Obligations of the Addressee and the Relying Party	191
	VI. Validity of Certificates	191
	A. Suspension of the Legal Effects of Certificates	192
	B. Suspension of CSPs	192
	C. Liability and Sanctions	192
	D. Transfer of Certificates and Registry	192
	VII. Recognition of Foreign Certificates and Electronic Signatures	192
Chapter 4.	Regulation of Electronic Signatures for the Financial and Banking Sectors	194
§1.	LEGAL SCOPE	194

## Table of Contents

§2.	THE GOVERNING FRAMEWORK	194
§3.	SCOPE OF THE REGISTRAR CENTRAL AUTHORITY (RCA)	195
§4.	REQUIREMENTS TO OPERATE AS RA AND/OR CA OF THE ESI	195
§5.	CONDUCT OF THE CERTIFICATION AGENCY (CA)	195
§6.	CONDUCT OF THE RA	197
§7.	RIGHTS AND OBLIGATIONS OF CERTIFICATE OWNERS	198
	I. Rights	198
	II. Obligations	199
§8.	LIABILITY OF THE RCA	199
Chapter 5.	Regulation of Electronic Signatures for the Tax and Fiscal Sector	200
§1.	APPLICABLE FRAMEWORK	200
§2.	LEGAL VALIDITY OF ELECTRONIC SIGNATURES AND CERTIFICATES	200
	I. Functional Equivalence	200
	II. On the Certification Service Provider	200
	III. On the Certificates	201
	A. Term	201
	B. Recognition of Other Certificates	201
	C. Acknowledgment of Receipt	201
	D. Certification Services of SAT	201
	E. Requirements of Digital Certificates	202
	F. Cancellation of Certificates	203
§3.	OBLIGATIONS OF CERTIFICATE OWNERS	203
§4.	DIGITAL TAX INVOICES	204
	I. Legal Recognition	204
	II. Requirements of Digital Tax Invoices	204
	III. Term	205
Chapter 6.	Regulation of Electronic Signatures for the Public Administration	206
§1.	ELECTRONIC SIGNATURES AND CERTIFICATES UNDER COMPRANET	206

## Table of Contents

I.	Accreditation	206
II.	On the Certificates	206
III.	Obligations for Participants	207
IV.	Obligations of Government Entities	207
V.	Penalties	207
§2.	ELECTRONIC SIGNATURES AND CERTIFICATES UNDER TRAMITANET	208
I.	General Purpose	208
II.	Obligations for Public Entities and Organizations	208
III.	Certification	209
IV.	On Certificates	210
	A. Term	210
	B. Requirements	210
	C. Acknowledgement of Certificates Issued by Public Fedatarios	210
V.	Electronic Signatures	210
§3.	ELECTRONIC SIGNATURES AND CERTIFICATES UNDER DECLARANET	211
I.	Obligations for Public Officials	211
II.	Exemptions	211
III.	Obligations of the Certification Authority	211
IV.	On the Certificates	212
§4.	GENERAL COMMENTS	212
Chapter 7.	The Law for Advanced Electronic Signatures	213
Chapter 8.	Status of Electronic Cards	217
§1.	THE ELECTRONIC CARD OF PUBLIC HEALTH INSURANCE ( TARJETA CON CHIP INTELIGENTE DEL SEGURO POPULAR DE SALUD)	217
§2.	THE CITIZEN IDENTITY CARD ( CÉDULA DE IDENTIDAD CIUDADANA CEDI)	217
§3.	THE IDENTITY CARD FOR MINORS ( CÉDULA DE IDENTIDAD PARA MENORES)	218
Chapter 9.	Online Banking	219
§1.	STATISTICS	219
Part V.	Non-contractual Liability	221

## Table of Contents

Chapter 1. Negligence and Damage Redress	221
Chapter 2. Liability of Service Providers	223
Part VI. Online Legal Proceedings	225
Chapter 1. Online Trial Guidelines	225
§1. GENERAL BACKGROUND	225
§2. PURPOSE AND DEFINITIONS	226
§3. EXTERNAL USERS: ACCESS CREDENTIALS AND PASSWORDS	226
§4. REGISTRY OF AUTHORITIES	226
§5. INTERNAL USERS. ACCESS CREDENTIALS AND PASSWORDS	227
§6. REQUIREMENTS FOR THE SIGNATURE OF ACTS AND JUDGMENTS	227
§7. ONLINE JUSTICE SYSTEM	227
§8. INTEGRITY OF THE ONLINE JUSTICE SYSTEM	228
§9. INFORMATION BACK-UP AND SECURITY	228
§10. ADVANCED ELECTRONIC SIGNATURE	228
§11. ONLINE TRIAL REQUIREMENTS	229
§12. NON-DOCUMENTARY EVIDENCE REPORT	229
§13. ACCUMULATION OF ONLINE AND TRADITIONAL TRIALS	229
§14. BAR CODE	230
§15. DIGITIZATION, PRINTING AND DOCUMENT PROTECTION	230
§16. ELECTRONIC BULLETIN	230
§17. SANCTIONS	230
Part VII. Privacy and Data Protection	233
§1. GENERAL BACKGROUND	233



## Table of Contents

§2.	CONSTITUTIONAL REFORMS IN THE FIELD OF PRIVACY AND DATA PROTECTION	234
§3.	THE REGULATION OF PRIVACY IN THE FEDERAL CONSTITUTION	236
§4.	FEDERAL LEGISLATION	238
§5.	STATE LEGISLATION	253
I.	Colima	253
II.	Jalisco	254
III.	Guanajuato	254
IV.	Tlaxcala	255
V.	Distrito Federal (Mexico City)	255
VI.	Chihuahua	256
§6.	PRIVACY AND DATA PROTECTION OBLIGATIONS CONTAINED IN INTERNATIONAL AGREEMENTS AND COMMERCIAL TREATIES	257
I.	International Agreements	257
II.	Commercial Treaties	257
A.	World Trade Organization (WTO)	257
B.	North American Free Trade Agreement (NAFTA)	258
C.	The Security and Prosperity Partnership of North America (SPPNA)	259
D.	The EU-Mexico Trade Agreement	260
§7.	THE FEDERAL LAW ON PROTECTION OF PERSONAL DATA HELD BY PRIVATE PARTIES	262
I.	Scope and Purpose	262
II.	Subjects Covered and Exceptions	263
III.	Definitions	263
IV.	Legal Limits	263
V.	Applicable Law to Data Protection Procedures and Supplementary Frameworks	263
VI.	Principles for the Protection of Personal Data	263
VII.	Legality	264
VIII.	Consent	264
IX.	Quality	265
X.	Purpose	265
XI.	Proportionality	265
XII.	Compliance	265
XIII.	Loyalty	266
XIV.	Accountability	266
XV.	Privacy Notice	266