CYBER LAW IN ARGENTINA

SECOND EDITION

GUILLERMO CABANELLAS



Cyber Law in Argentina

Second Edition

Guillermo Cabanellas

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



Published by:

Kluwer Law International B.V.

PO Box 316

2400 AH Alphen aan den Rijn

The Netherlands

Website: 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

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

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 978-90-411-6752-1

This title is available on 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

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

The Author	3
List of Abbreviations	13
Preface	15
General Introduction	17
§1. GENERAL BACKGROUND I. Geography II. Cultural Composition III. Political System IV. Population Statistics	17 17 17 18 21
§2. HISTORICAL BACKGROUND	22
§3. Telecommunications Infrastructure	24
§4. THE COMMUNICATIONS AND INFORMATION TECHNOLOGY MARKET	25
§5. E-COMMERCE: FACTS AND FIGURES	25
§6. E-GOVERNMENT INITIATIVES	26
Part I. Regulation of the Information and Communications Technology (ICT) Market	29
Chapter 1. Regulatory Framework of the Telecommunications Sector	29
Chapter 2. Regulation of Competition in the ICT Market	34
Chapter 3. Regulation of Cryptography and Other Dual Use Goods	37

Chapter 4. Legal Status of Standardization	38
Chapter 5. Legal Status of Out-of-Court Dispute Settlement in the ICT Sector	39
Part II. Protection of Intellectual Property in the ICT Sector	41
Chapter 1. Application of Copyright in the Area of ICT	41
Chapter 2. Legal Protection of Software	46
§1. Introduction	46
§2. Subject Matter of Protection	46
§3. CONDITIONS OF PROTECTION	51
§4. Ownership	51
§5. Scope of Exclusive Rights	55
§6. LIMITATIONS ON THE SCOPE OF PROTECTION	59
§7. DURATION OF PROTECTION	62
§8. Complementary Provisions	63
Chapter 3. Legal Protection of Databases	64
§1. Introduction	64
§2. Subject Matter and Conditions of Protection	65
§3. Ownership	66
§4. Scope of Exclusive Rights	67
§5. LIMITATIONS ON THE SCOPE OF PROTECTION	68
§6. Duration of Protection	68
Chapter 4. Legal Protection of Computer Chips	69
§1. Sources; Legislation	69

§2. SUBJECT MATTER OF PROTECTION	71
§3. CONDITIONS OF PROTECTION	71
§4. FORMALITIES; PROCEDURE FOR OBTAINING PROTECTION	72
§5. OWNERSHIP AND TRANSFER	72
§6. Scope of Exclusive Rights	72
§7. LIMITATIONS OF THE SCOPE OF PROTECTION	72
§8. DURATION OF PROTECTION	72
§9. Infringement and Remedies	72
§10. OVERLAPPING AND RELATION TO OTHER INTELLECTUAL PROPERTY LAWS	73
Chapter 5. Other Intellectual Property Rights in the ICT Sector	74
§1. Generally	74
§2. COPYRIGHT AND NEIGHBOURING RIGHTS	74
§3. LEGAL PROTECTION OF MULTIMEDIA WORKS	76
§4. LEGAL PROTECTION OF WEB PAGES	73
§5. Other Intellectual Property Rights	78
Chapter 6. Internet Domain Name Registration	79
§1. Background	79
§2. The Assigning Authority	79
§3. THE LEGAL STATUS OF DOMAIN NAMES	80
§4. The Registration Procedure	80
§5. DISPUTE RESOLUTION	83
§6. CANCELLATION OF DOMAIN NAME REGISTRATION	84

§7. Transfer of Domain Name Registration Rights	84
§8. Conflicts between Domain Names and Trademarks	84
Part III. ICT Contracts	87
Chapter 1. Introduction	87
Chapter 2. Hardware Contracts	88
Chapter 3. Software Contracts	89
Chapter 4. Turnkey Contracts	94
Chapter 5. Maintenance Contracts	95
Chapter 6. Facilities Management	96
Chapter 7. Network Services	97
Part IV. Electronic Transactions	99
Chapter 1. Legal Status of Electronic Transactions	99
§1. LEGAL BACKGROUND	99
§2. ELECTRONIC TRANSACTIONS AND ELECTRONIC CONTRACTS	100
§3. ELECTRONIC COMMERCE AND CONSUMER TRANSACTIONS	107
Chapter 2. Regulation of Electronic Signatures and Certification Services	111
§1. Introduction	111
§2. THE DIGITAL SIGNATURE LAW	112
§3. DIGITAL SIGNATURE CERTIFICATES	114
§4. The Authorized Certifiers	116
§5. DIGITAL CERTIFICATES IN THE PUBLIC SECTOR	122

Chapter 3. Legal Aspects of Electronic Banking	123
§1. THE PROVISION OF ELECTRONIC BANKING SERVICES. APPLICABLE RULES	123
§2. Management, Risks and Security in the Context of Electronic Banking Activities	124
Chapter 4. Protection of Users of Electronic Services	127
§1. APPLICABLE RULES	127
§2. Scope of Protection	127
§3. SERVICE PROVIDERS OBLIGATIONS	128
§4. Contractual Provisions	129
§5. Liabilities towards Consumers	130
§6. Implementation and Sanctions	130
Part V. Non-contractual Liability	133
Chapter 1. Basic Rules	133
Chapter 2. Liability of Network Operators	137
Chapter 3. Liability of Service Providers	140
Chapter 4. Product Liability	148
Part VI. Privacy Protection	153
Chapter 1. Regulation of Personal Data Processing	153
§1. LEGAL STATUS OF DATA PROCESSING	153
§2. FEDERAL CONSTITUTIONAL PROTECTION	154
§3. Provincial Constitutional Protection	156
§4. Federal Legislation	156
§5. PURPOSE AND SCOPE OF THE PDPL	156

§6. Definitions	157
§7. General Principles	159
§8. Assignment of Personal Data	162
§9. International Transfers	164
§10. RIGHTS OF DATA OWNERS	165
§11. ORGANIZATION AND OBLIGATIONS OF DATA BANKS	168
§12. CREDIT REPORT SERVICES	171
§13. Archives, Registries or Data Banks Organized for Advertisement Purposes	172
§14. Data Related to Opinion Surveys and Statistics	173
§15. IMPLEMENTING AGENCY	173
§16. Codes of Conduct	174
§17. Administrative and Criminal Sanctions	174
§18. Personal Data Protection Actions	176
Chapter 2. Protection of Telecommunications Privacy	178
§1. CONFIDENTIALITY OF INFORMATION	178
§2. Personal Data Protection	181
§3. RIGHTS OF USERS AND CONSUMERS	181
§4. Unsolicited Communications	182
§5. RETENTION OF DATA	183
Part VII. Computer-Related Crime	185
Chapter 1. General Legal Developments	185
Chapter 2. Criminal Law Provisions Applicable in the	10*

§1. CHILD PORNOGRAPHY	187
§2. VIOLATION OF THE CONFIDENTIALITY OF COMMUNICATIONS	188
§3. ILLEGAL ACCESS TO COMPUTER SYSTEMS	188
§4. ILLEGAL PUBLICATION OF COMMUNICATIONS	189
§5. DISCLOSURE OF SECRETS	189
§6. Personal Data Related Crimes	190
§7. Interception of Communications	190
§8. Computer Fraud	190
§9. Damage to Computer Systems	192
§10. DISRUPTION OF COMMUNICATIONS	192
§11. COPYRIGHT INFRINGEMENTS	192
Chapter 3. Application of Criminal Procedure Law in the Area of ICT	194
§1. SEARCH AND SEIZURE OF STORED COMPUTER DATA	194
§2. Interception of Communications	194
§3. ELECTRONIC EVIDENCE	194
Selected Bibliography	195
Index	201

Cyber Law in Argentina

Second Edition

Guillermo Cabanellas

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



Published by:

Kluwer Law International B.V.

PO Box 316

2400 AH Alphen aan den Rijn

The Netherlands

Website: 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

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

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 978-90-411-6752-1

This title is available on 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

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

The Author



Guillermo Cabanellas (born 14 July 1950) obtained degrees in economics (1971) and law (1972) from the National University of Buenos Aires. He graduated as Master in Comparative Law (1975) and as Doctor of the Science of Law (1978) at the University of Illinois. From 1977 to 2012 he has taught at the University of Illinois. He has been visiting professor at the University of Loyola, Los Angeles, and at the University of Miami. He is also professor at the National University of Buenos Aires, at the Universidad Austral Argentina and at the Universidad de San Andrés (Argentina). He is honorary professor at the Catholic University of Arequipa, Perú. Professor

Cabanellas was member of the board of directors of the National Foreign Trade Commission of Argentina. He has also acted as General Director of Economic Legislation of the Ministry of the Economy of Argentina, and as member of several legislative commissions. In the years 1981, 1982 and 1987 he was research fellow at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich. He is member of the editorial board of the World Intellectual Property Organization (WIPO) Journal.

The Author

The Author	3
List of Abbreviations	13
Preface	15
General Introduction	17
§1. GENERAL BACKGROUND I. Geography II. Cultural Composition III. Political System IV. Population Statistics	17 17 17 18 21
§2. HISTORICAL BACKGROUND	22
§3. Telecommunications Infrastructure	24
§4. THE COMMUNICATIONS AND INFORMATION TECHNOLOGY MARKET	25
§5. E-COMMERCE: FACTS AND FIGURES	25
§6. E-Government Initiatives	26
Part I. Regulation of the Information and Communications Technology (ICT) Market	29
Chapter 1. Regulatory Framework of the Telecommunications Sector	29
Chapter 2. Regulation of Competition in the ICT Market	34
Chapter 3. Regulation of Cryptography and Other Dual Use Goods	37

Chapter 4. Legal Status of Standardization	38
Chapter 5. Legal Status of Out-of-Court Dispute Settlement in the ICT Sector	39
Part II. Protection of Intellectual Property in the ICT Sector	41
Chapter 1. Application of Copyright in the Area of ICT	41
Chapter 2. Legal Protection of Software	46
§1. Introduction	46
§2. Subject Matter of Protection	46
§3. Conditions of Protection	51
§4. Ownership	51
§5. Scope of Exclusive Rights	55
§6. LIMITATIONS ON THE SCOPE OF PROTECTION	59
§7. Duration of Protection	62
§8. Complementary Provisions	63
Chapter 3. Legal Protection of Databases	64
§1. Introduction	64
§2. Subject Matter and Conditions of Protection	65
§3. Ownership	66
§4. SCOPE OF EXCLUSIVE RIGHTS	67
§5. LIMITATIONS ON THE SCOPE OF PROTECTION	68
§6. DURATION OF PROTECTION	68
Chapter 4. Legal Protection of Computer Chips	69
§1. Sources; Legislation	69

§2. Subject Matter of Protection	71
§3. CONDITIONS OF PROTECTION	71
§4. FORMALITIES; PROCEDURE FOR OBTAINING PROTECTION	72
§5. OWNERSHIP AND TRANSFER	72
§6. Scope of Exclusive Rights	72
§7. LIMITATIONS OF THE SCOPE OF PROTECTION	72
§8. DURATION OF PROTECTION	72
§9. Infringement and Remedies	72
§10. Overlapping and Relation to Other Intellectual Property Laws	73
Chapter 5. Other Intellectual Property Rights in the ICT Sector	74
§1. Generally	74
§2. COPYRIGHT AND NEIGHBOURING RIGHTS	74
§3. LEGAL PROTECTION OF MULTIMEDIA WORKS	76
§4. LEGAL PROTECTION OF WEB PAGES	77
§5. OTHER INTELLECTUAL PROPERTY RIGHTS	78
Chapter 6. Internet Domain Name Registration	79
§1. BACKGROUND	79
§2. The Assigning Authority	79
§3. THE LEGAL STATUS OF DOMAIN NAMES	80
§4. The Registration Procedure	80
§5. DISPUTE RESOLUTION	83
§6. CANCELLATION OF DOMAIN NAME REGISTRATION	84