

Text and Cases

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cyberLAW

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This book is printed on acid-free paper.

For Judith, David, Vinita and Boulder
—GRF

For my wife, Cindy, our children Jeff and Julie, and my parents, Max and Frances.
—SDL

For all of my family, friends and colleagues
—MEKR

This book is for two dedicated and inspiring teachers: Fred and Libby Schneider
—RA

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Preface

You are holding in your hands the first Cyberlaw textbook written specifically for business students: *Cyberlaw: Text and Cases*. Information technology is no longer merely intersecting with business, but has become an integral part of our economy—as the business news media will not let us forget. When business students are asked what they would like to see added to the business law curriculum, the answer is no surprise. What they want, and what they need, is a course on cyberlaw! The authors were driven to write this text by one common theme: to prepare business students with a legal competency suitable for the e-commerce business manager of the 21st century.

Cyberlaw: Text and Cases is appropriate for a course that builds on the principles of law and the legal environment of business already taught in business schools. After all, laws that apply to real space also apply to cyberspace. Shrink-wrap contracts are still contracts. Federal registration of domain names, web pages, and business methods in the United States Patent and Trademark Office are still governed by intellectual property law. Case decisions on jurisdiction of an e-business are analyzed on a sliding scale based on a company's interaction with the end user, but the law continues to require satisfaction of the long-arm statute and compliance with the due process clause. Privacy has taken on a new significance with digital profiling, but the legal analysis remains the same.

It is the authors' intent to illustrate throughout this textbook how cyberlaw builds on the offline analysis of traditional principles of jurisprudence. This textbook contains the leading cases and statutes in Cyberlaw explained in a clear and comprehensive style. It is the authors' sincere hope that you thoroughly enjoy this textbook and the experience of learning about the exciting and dynamic discipline of cyberlaw.

Subject Matter and Basic Organization of the Text

The subjects covered follow a logical application of the legal issues surrounding e-commerce. The book's focus is on the needs of business managers working, in some fashion, in the online environment. The authors are convinced that this includes the needs of almost every business school graduate about to enter the workforce.

Accreditation

The subject matter of the textbook covers ethical, political, and international issues as well as a main focus on technology as it relates to the world of business. This makes a course in cyberlaw suitable for American Assembly of Collegiate Schools of Business (AACSB) accreditation.

Outline of the Text

Part I—Introduction

Chapter 1—Technology and Cyberlaw. This chapter starts with an introduction to the technology that may be useful to students and faculty just becoming acquainted with computer technology. Students should make frequent visits to this chapter to develop a comfortable sense of how the Internet functions and how this technology creates unique legal problems.

Chapter 2—Jurisdiction. This chapter answers the e-business question: Where can I be sued? Being online globally 24-hours a day, 7 days a week, opens up a possibility of defending a lawsuit in a foreign state or country. The chapter offers legal strategies to reduce that possibility.

Part II—Intellectual Property

Chapter 3—Copyrights. Can Web pages be registered in the Patent and Trademark Office? Can an e-business link to another site without its permission? What are the theories of copyright infringement relative to the online legal environment? Computer copies of copyright material are a common practice. This chapter explains how copyright law applies to an e-business venture with practical legal suggestions on how to protect it from copyright liability.

Chapter 4—Trademarks. The registration of a domain name gives ownership rights to the holder that often conflict with a pre-existing trademark owner. This chapter explains the online environment of trademark infringement and trademark dilution of a famous mark and other issues created by Internet technology that cause trademark law violations. It also discusses the recently enacted Anti-cybersquatting Consumer Protection Act.

Part III—Business and Financial Issues in Cyberspace

Chapter 5—Online Contracting. Online contractual transactions have become the common way of business dealings. This chapter discusses the digital legal

environment of contracts and explains the relationship between offline and online contracting.

Chapter 6—Taxation. The public debate on Internet taxation will continue to be part of any discussion of e-commerce. This chapter discusses the issues relevant to state tax jurisdiction and explains the leading United States Supreme Court decision on the requirement of a state tax “nexus” before it may impose a tax burden on a business enterprise.

Chapter 7—Securities Offerings on the Internet. As businesses have migrated to the Internet to conduct some capital-raising ventures, regulators have had to adapt the laws to ensure investors continue to be protected. The Internet as a capital-raising forum is one of the most significant milestones in the evolution of capital markets. This chapter discusses the requirements for online offerings and the relevant laws.

Part IV—Social Issues in Cyberspace

Chapter 8—Privacy. Perhaps the most controversial issue in cyberspace is the secret collection of consumer information by digital profiling and the right to privacy. Will the federal government regulate this practice? A host of issues relating to online privacy, or the lack thereof, are discussed in this chapter.

Chapter 9—Obscenity. The Internet is used for the publication of child pornography and other obscene material. Pornography and adult Web site are readily available to children. This chapter discusses the federal statutes enacted to regulate this practice and the ongoing conflict with the First Amendment right to Free Speech.

Chapter 10—Defamation. Web sites often use chat rooms for consumer discussion about a product or service being sold online. When an outsider posts a defamatory remark about a person or a business, is the e-business liable? This chapter discusses that question and other issues that pertain to online defamation.

Chapter 11—Internet and Information Security. Businesses have increasingly become reliant on computers with telecommunications abilities. This networked environment—between clients, suppliers, and support providers creates unprecedented efficiencies, but also creates many vulnerabilities. This chapter discusses the goals of Internet and Information Security, the methods for protecting systems, and the legal challenges of information security technologies.

Chapter 12—Internet Crime. The Internet has made possible new and more efficient plays on traditional crimes, such as money laundering, but it has also made possible entirely new classes of crimes, for example cyberstalking. This chapter discusses a wide range of substantive crimes that occur due to the Internet, and the relevant laws.

Part V—International Issues in Cyberspace

Chapter 13—Global Issues. The very nature of e-commerce is international in scope. This chapter provides an overview of the international organizations and regulations that affect international e-commerce.

Features

Manager's Checklist. Each chapter provides a Manager's Checklist that offers suggestions useful to business managers working in online environments in an effort to reduce their companies' liability exposure. The authors wanted to blend the practical with the necessary theoretical legal analysis found in the case decisions.

Cyberethics. Students should continue to discuss ethical dilemmas found in business transactions. Online business has its own set of unique relationships that often develop into potentially unethical business conduct. The cyberethics boxes in each chapter should lead to lively class discussions.

Web sites. Throughout the textbook Web sites are noted that apply to the subject matter and can be used for additional reading, legal resources, and topics of interest.

End-of-chapter short cases. Five cases are included at the end of each chapter for classroom testing or discussion of the material.

Appendixes. Several abbreviated statutes relevant to e-business are found in the Appendix at the end of the text.

Supplements

An **Instructor's Manual** is available that includes answers to case questions and end-of-chapter cases, additional Internet resources, and an optional list of suggested readings suitable for use in graduate courses on cyberlaw.

Text Web site. A robust Web site at <http://ferrera.westbuslaw.com> is available for the text, and contains Internet Updates, cyberlaw Case Updates, links to the West Business Law Faculty Center and its many teaching resources, and to the Student Center with links to Black's Legal Dictionary, news, legal, and government links, InfoTrac College Edition, and much more.

Westlaw. Ten complimentary hours of Westlaw are available to qualified adopters from West's premier legal research system.

West's Video Library. Qualified adopters may choose from West's vast video library including titles from CNN and Court TV. The CNN video contains 23 clips dealing with Internet issues such as e-commerce, spam, hacking, pornography, censorship, and privacy, and can serve as a starting point for class discussions or assignments.

A **Handbook of Basic Law Terms Black's Dictionary Series** may be shrink-wrapped with the text at a discounted price. A *Handbook of Basic Law Terms* is a guide to the most important and most common words and phrases used in the law today. Students can keep this comprehensive and helpful dictionary for both their professional and personal lives.

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