CYBER LAW IN THE UNITED KINGDOM

IAN LLOYD



KLUWER LAW INTERNATIONAL

Cyber Law in the United Kingdom

Ian Lloyd

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

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Editor: Jos Dumortier



AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc.

7201 McKinney Circle Frederick, MD 21704 United States of America

Email: customer.service@aspenpublishers.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 978-90-411-3312-0

© 2010 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 written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by CPI Antony Rowe, Chippenham and Eastbourne

The Author		3
List of Abb	reviations	11
General Int	roduction	13
Chapter 1.	General Background of the Country	13
Chapter 2.	Telecommunications Infrastructure	15
§1. General		15
§2. Fixed-Li	ne Networks	15
§3. Mobile	Telephony	16
Chapter 3.	The Information and Communications Technologies Market	18
Chapter 4.	E-commerce: Facts and Figures	19
Chapter 5.	E-government Initiatives	20
Selected B	ibliography	21
Part I. Reg	gulation of the ICT Market	23
Chapter 1.	Regulatory Framework of the Telecommunications Sector	23
§1. KEY DEF	INITIONS	32
	TING THE SECTOR Regulators or Multi-member Commissions	34

§3.	THE OFFICE OF COMMUNICATIONS I. The Consumer Panel	35 35
	II. The Telecommunications Ombudsman	36
	III. Duties of OFCOM	36
	A. General Duties	37
	B. Community Requirements	38
§4.	From Licensing to General Conditions	39
	I. Procedure for Making Conditions	40
	II. Contents of General Conditions	41
	A. Condition One Access and Interconnection	42
	B. Standardization	42
	C. Proper and Effective Functioning of the Network	42
	D. Emergency Call Numbers	42
	E. Use During Disasters	42
	F. Public Pay Telephones	42
	G. Must Carry Obligations	43
	H. Operator Assistance, Directories and Directory Enquiry Facilities	43
	I. Requirements to Offer Contracts	43
	J. Transparency and Publication of Information	44
	K. Metering and Billing	44
	L. Itemized Bills	44
	M. Non-payment of Bills	44
	N. Codes of Practice and Dispute Resolution	45
	O. Provision for Users with Disabilities	45
	P. Provision of Additional Facilities	45
	Q. Allocation and Adoption of Telephone Numbers	45 46
	R. Number Portability S. Provision of Directory Information	46
	T. Non-geographic Numbers	46
	U. Quality of Service	46
	III. Enforcing Conditions	46
	IV. Appealing against Decisions	47
§5.	. Interconnection and Access	49
§6.	. Universal Service	53
	I. Universal Service in the Communications Act	56
	II. The Universal Service Order	57
§7.	. Conclusions	58
Cl	napter 2. Regulation of Competition in the ICT Market	59
§ 1	. Concerted Practices and Oligopolistic Markets	61
§2	. Abuse of a Dominant Position	63

Chapter 3. Regulation of Cryptography and Other Dual-use Goods	72
Chapter 4. Legal Status of Standardization	74
Chapter 5. Legal Status of Out-of-court Dispute Settlement in the ICT Sector	78
Part II. Protection of Intellectual Property in the ICT Sector	81
Chapter 1. Application of Copyright in the Area of ICT	81
§1. The Requirement of Originality	83
§2. Ownership of Copyright	84
§3. Commencement and Duration of Protection	85
§4. Applying Copyright Principles to Software	85
§5. Software Piracy	86
§6. A Use Right for Software?	87
§7. Back-up Copies	88
§8. Extent of Copyright Protection	88
Chapter 2. Legal Protection of Software	95
§1. The Process of Obtaining a Patent	96
§2. The Development of Software Patents	98
Chapter 3. Legal Protection of Databases	112
Chapter 4. Legal Protection of Computer Chips	120
Chapter 5. Other Intellectual Property Rights in the ICT Sector	123
Chapter 6. Internet Domain Name Registration	126

Part III. ICT Contracts	129
Chapter 1. Hardware Contracts	129
Chapter 2. Software Contracts	130
Chapter 3. Turnkey Contracts	143
Chapter 4. Distribution Agreements	144
Chapter 5. Maintenance Contracts	145
Chapter 6. Facilities Management	146
Chapter 7. Network Services	147
Chapter 8. Government Contracts	148
Part IV. Electronic Transactions	149
Chapter 1. Legal Status of Electronic Transactions	149
Chapter 2. Regulation of Electronic Signatures and Certification Services	151
Chapter 3. Legal Aspects of Electronic Banking	155
Chapter 4. Protection of Users of Electronic Services	156
Part V. Non-contractual Liability	157
Chapter 1. Negligence	157
Chapter 2. Liability of Network Operators	16
Chapter 3. Liability of Service Providers	162
Chapter 4 Product Liability	170

Part VI. Privacy Protection	175
Chapter 1. Regulation of Personal Data Processing	175
Chapter 2. Protection of Telecommunications Privacy	189
Part VII. Computer-Related Crime	197
Chapter 1. General Legal Development	197
Chapter 2. Application of Criminal Procedure Law in the Area of ICT	206
Conclusions	
Index	215

KLUWER LAW INTERNATIONAL

Cyber Law in the United Kingdom

Ian Lloyd

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

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Editor: Jos Dumortier



AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by: Kluwer Law International

PO Box 316 2400 AH Alphen aan den Rijn

The Netherlands

Website: www.kluwerlaw.com

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

Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704

United States of America

Email: customer.service@aspenpublishers.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 978-90-411-3312-0

© 2010 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 written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by CPI Antony Rowe, Chippenham and Eastbourne

The Author



Ian Lloyd was born in Barrow-in-Furness, England in 1955. He was awarded the degree of LLB (Honours) from the University of Strathclyde in 1976, LLM (in European Legal Studies) from the University of Exeter in 1984 and PhD from the University of Strathclyde in 1987. His initial teaching appointment was in the Department of Private Law in the University of Aberdeen from 1977 to 1979. In 1979 he was appointed lecturer in the law school of the University of Strathclyde being

promoted to Senior Lecturer, Reader, and finally to his present post of Professor of Information Technology Law in 1996. He is married to Moira Simpson and has two sons, Thomas and James.

The Author

The Author	3
List of Abbreviations	11
General Introduction	13
Chapter 1. General Background of the Country	13
Chapter 2. Telecommunications Infrastructure	15
§1. General	15
§2. Fixed-Line Networks	15
§3. Mobile Telephony	16
Chapter 3. The Information and Communications Technologies Market	18
Chapter 4. E-commerce: Facts and Figures	19
Chapter 5. E-government Initiatives	20
Selected Bibliography	21
Part I. Regulation of the ICT Market	23
Chapter 1. Regulatory Framework of the Telecommunications Sector	23
§1. Key Definitions	32
§2. REGULATING THE SECTOR I. Single Regulators or Multi-member Commissions	34 34

§3.	THE OFFICE OF COMMUNICATIONS I. The Consumer Panel II. The Telecommunications Ombudsman III. Duties of OFCOM A. General Duties B. Community Requirements	35 35 36 36 37 38
§4.	I. Procedure for Making Conditions II. Contents of General Conditions A. Condition One Access and Interconnection B. Standardization C. Proper and Effective Functioning of the Network D. Emergency Call Numbers E. Use During Disasters F. Public Pay Telephones G. Must Carry Obligations H. Operator Assistance, Directories and Directory Enquiry Facilities I. Requirements to Offer Contracts J. Transparency and Publication of Information K. Metering and Billing L. Itemized Bills M. Non-payment of Bills N. Codes of Practice and Dispute Resolution O. Provision for Users with Disabilities P. Provision of Additional Facilities Q. Allocation and Adoption of Telephone Numbers R. Number Portability S. Provision of Directory Information T. Non-geographic Numbers U. Quality of Service III. Enforcing Conditions IV. Appealing against Decisions	39 40 41 42 42 42 42 42 43 43 43 44 44 44 45 45 45 46 46 46 46 47
§5.	. Interconnection and Access	49
§6.	I. Universal Service in the Communications Act II. The Universal Service Order	53 56 57
§7.	. Conclusions	58
Ch	napter 2. Regulation of Competition in the ICT Market	59
§1.	. Concerted Practices and Oligopolistic Markets	61
§2.	. Abuse of a Dominant Position	63

Chapter 3. Regulation of Cryptography and Other Dual-use Goods	72
Chapter 4. Legal Status of Standardization	74
Chapter 5. Legal Status of Out-of-court Dispute Settlement in the ICT Sector	78
Part II. Protection of Intellectual Property in the ICT Sector	81
Chapter 1. Application of Copyright in the Area of ICT	81
§1. The Requirement of Originality	83
§2. Ownership of Copyright	84
§3. Commencement and Duration of Protection	85
§4. Applying Copyright Principles to Software	85
§5. Software Piracy	86
§6. A Use Right for Software?	87
§7. Back-up Copies	88
§8. Extent of Copyright Protection	88
Chapter 2. Legal Protection of Software	95
§1. The Process of Obtaining a Patent	96
§2. The Development of Software Patents	98
Chapter 3. Legal Protection of Databases	112
Chapter 4. Legal Protection of Computer Chips	120
Chapter 5. Other Intellectual Property Rights in the ICT Sector	123
Chapter 6. Internet Domain Name Registration	126

art III. ICT Contracts	129
Chapter 1. Hardware Contracts	129
Chapter 2. Software Contracts	130
Chapter 3. Turnkey Contracts	143
Chapter 4. Distribution Agreements	144
Chapter 5. Maintenance Contracts	145
Chapter 6. Facilities Management	146
Chapter 7. Network Services	147
Chapter 8. Government Contracts	148
Part IV. Electronic Transactions	149
Chapter 1. Legal Status of Electronic Transactions	149
Chapter 2. Regulation of Electronic Signatures and Certification Services	151
Chapter 3. Legal Aspects of Electronic Banking	155
Chapter 4. Protection of Users of Electronic Services	156
Part V. Non-contractual Liability	157
Chapter 1. Negligence	157
Chapter 2. Liability of Network Operators	161
Chapter 3. Liability of Service Providers	162
Chapter 4. Product Liability	170

Part VI. Privacy Protection	175
Chapter 1. Regulation of Personal Data Processing	175
Chapter 2. Protection of Telecommunications Privacy	189
Part VII. Computer-Related Crime	197
Chapter 1. General Legal Development	197
Chapter 2. Application of Criminal Procedure Law in the Area of ICT	206
Conclusions	
Index	215