

THE LEGAL AND REGULATORY ENVIRONMENT OF e-BUSINESS

Law for the Converging Economy



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Bagby & McCarty

The Legal and Regulatory Environment of e-Business

Law for the Converging Economy

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Preface

A NEW KIND OF LEGAL ENVIRONMENT TEXTBOOK

This text was written to fulfill the needs of a traditional legal environment course, but it takes a nontraditional approach. Reflecting a new world that combines traditional commerce and emerging e-commerce, this book is the first to fully integrate both perspectives for the legal environment course. Traditional commerce and electronic commerce are merging today, as evidenced by the number of business-to-business transactions accomplished with significant e-commerce components in payments, electronic data interchange, or electronic processing of documents. Transactions between businesses and consumers are following a similar pattern, evolving to include significant elements of electronic assent, transaction processing, and performances. For example, most new car purchases involve some Internet activity, businesses advertise through the Internet, and consumers use retailing, travel, and other services available on the Internet. In addition, sectors such as government utilize the Internet through interactive processes with citizens (taxes, licensing, information), as well as the procurement of goods and services from vendors. Electronic marketplaces are also changing the face of consumer-to-consumer transactions as electronic auction markets make secondhand resale markets more liquid. As the legal environment of business is no longer based only on the traditional economy, this book captures the evolution toward regulations applicable to both traditional and e-commerce methods of business.

ADAPTING LAW AND REGULATION TO THE CONVERGING ECONOMY

The dot.com revolution of the late 1990s abruptly ended in a sobering realization that many aspects of traditional business models are still valid. The dot.com bubble economy misled venture capitalists, the securities markets, and a whole generation of entrepreneurs into believing that traditional measures of profitability and return on investment were inapplicable to Internet enterprises. Sole reliance on electronic

commerce methods seems appropriate for only narrow sectors of the economy. Yet, smokestack industries that resisted the cyberspace revolution in the 1990s are increasingly involved in e-commerce. For example, traditional industries are progressively more involved in on-line business-to-business marketplaces. They are migrating their customer service networks to e-mail, electronic data interchange, and on-line customer information, including website catalogues, specification listings, and electronic contracting. Tremendous efficiencies are derived through the widespread use of electronic bill presentment and electronic payments, electronic commercial document processing, and enterprise software using computerized networks to connect multiple locations and with customers and suppliers.

Since the burst of the dot.com bubble, it has become evident that neither the traditional sector of the economy nor the e-commerce sector should be viewed in isolation. A few years ago, some commentators heralded the “new” economy, dubbing it “clicks” and predicting its superiority over the “old economy,” the “bricks.” There was widespread speculation of a long, steady decline in the traditional economy. Others rejoiced at the burst of the dot.com bubble, claiming that e-commerce lacked any real substance. This position overlooks the rather substantial influence and ongoing growth of computerized telecommunications and information technology on existing and emerging businesses. Increasingly, there is a recognition that most businesses in the future will converge on a hybrid of methods that must first retain the rigors of the traditional economy, including financial control, profitability requirements, disciplined management, and attention to supply chain efficiencies. At the same time, successful future businesses must implement effective information and communications technologies that were once considered the sole province of e-commerce companies: electronic communications, electronic data mining, electronic contract negotiation and formation, electronic transaction processing, electronic payments, and electronic performances.

The modernization of business techniques offered by e-commerce business models offers tangible productivity improvements, speeds the effectiveness of commercial interactions, and is replacing many traditional paper-based and hand-operated business processes of the traditional economy. All this suggests that a convergence of traditional business models with information technology methods requires major redesign of business models and business processes in order to sustain competitive advantage. The laws facilitating this transition must be understood and respected for the timeless aspects of traditional public policies. Recognizing which laws must be updated—sometimes even replaced with new laws—reflects the changing reach and functionality of new technology. Business managers need an understanding of traditional legal problem areas such as an employer’s liability for workplace sexual harassment or service and product liability standards, as well as for emerging problem areas such as privacy laws or intellectual property protection.

The Legal and Regulatory Environment of e-Business: Law for the Converging Economy provides a comprehensive perspective on both traditional legal problems and new laws tailored for e-business. Traditional areas of administrative regulations, formation of business organizations, contract law, tort liability, and labor and equal opportunity laws continue to be important parts of the modern legal environment. This text combines a focus on those strategic areas with a focus on converging industries by providing unique insights into the blend of traditional and emerging principles that will equip managers to better understand and deal with their legal environment.

HOW THIS TEXT CONTRIBUTES TO SKILLS NEEDED FOR CONVERGENCE

The study of the legal and regulatory environment of business will have enduring relevance applicable today and in the future. It is intended to provide understanding of the evolution and the integration of traditional and new legal principles to the evolving marketplace. The evolution to e-commerce is forcing all business disciplines to reevaluate their basic principles, develop new models and analytical tools, and then integrate them into traditional disciplines. Managers must remain aware of the law underlying their existing business disciplines and how changes will require them to modify their decision making.

It is widely predicted that e-commerce practices will radically change traditional business methods as innovative methods are ever more frequently introduced. During such turbulence, a firm grounding in basic legal concepts is needed to understand potential legal pitfalls and to anticipate and forestall problems.

There are several reasons why business decision makers need both an understanding of basic legal principles that have been applied to traditional business methods and an understanding of e-commerce cyber law. First, the enforceability of contracts is essential to encourage use of, reliance upon, and investment in e-commerce. The risks of nonenforceability and even the risks of higher transaction costs are currently a significant barrier to faster growth in e-commerce. Second, many participants in cyberspace and many business decision makers have been proceeding into e-commerce without the benefit of careful strategic review by legal counsel competent in cyber law. Considerable risk of loss is already well documented for such underinformed ventures. Third, many businesspeople are more experienced with traditional commercial practice than with the unique property rights problems of intellectual property. Continued unfamiliarity with copyright and trademark ownership, licensing, and infringement are already leading to extensive and costly litigation. This book will enable business decision makers to better understand the law's effect on both traditional and e-commerce-related practices.

PHILOSOPHY OF THIS TEXT

Several major themes running throughout this text build student skills for careers in converging businesses. First, this text focuses on how existing laws are accommodating the transition and on what issues new perspectives are needed from legislation, regulation, judicial interpretation, private contracting, industry self-regulation, and public policy. Second, students are thoroughly exposed to electronic commercial practices and technology transfer. A firm grasp of the historical, social, political, and economic context of legal issues permits business decision makers to understand how traditional law is adapting to the new context. Third, substantive topics of the law of technology and cyber law are assembled into several major areas, including constitutional law, commercial law and practice, intellectual property, privacy, and regulation.

ORGANIZATION OF THIS TEXT

The Legal and Regulatory Environment of e-Business: Law for the Converging Economy is organized into five parts, each containing three to six chapters of

related material. Part I, The Legal System, introduces law study, legal process, constitutional law, international law, and the administrative process of regulatory agencies. In Part II, Private Law is explored, including criminal and tort law, product and service liability, and business organization law. Part III has extensive coverage of e-commerce, including contract formation, performance, payments, writings and records, remedies, creditors' rights, technology transfer, employment and service contracts, and privacy. In Part IV, Intellectual Property, there is in-depth coverage of copyrights, database protections, trade secrets, patents, and trademarks. Finally, Part V, Regulation, covers a wide range of business regulations affecting both traditional and e-commerce business activities, including antitrust, labor and employment law, equal employment opportunities, securities regulations, environmental law, and Internet regulation. The breadth and depth of coverage is unprecedented in a legal environment text.

PEDAGOGY

The text and supporting instructional materials acquaint students in business and the information sciences with the laws of business and e-commerce. It identifies the key legal, regulatory, and public policy issues arising in the migration of society to cyberspace and in business's implementation of e-commerce methods. Students will learn about the legal and business issues of e-commerce with a view to gaining perspective on the transformation of traditional contracting behaviors and processes as they move into cyberspace.

Courses in e-commerce based on *The Legal and Regulatory Environment of e-Business: Law for the Converging Economy* may utilize traditional as well as emerging pedagogies: texts, outside readings, lecture, class discussion, guest lectures, videos, case law, Socratic dialog, and student-centered learning techniques such as team projects and presentations. The subject matter is particularly suitable for instructional support through technology-driven pedagogies such as multimedia presentations, Internet-based instruction, on-line exploration, and research in computer-equipped classrooms or outside the classroom via computer laboratories and students' personal computers. The subject matter permits students to conduct Internet search and research projects. These participative and active learning techniques are well suited for familiarizing students with the methods and architecture of cyberspace and the controversies of e-commerce.

KEY FEATURES

International and ethical aspects are integrated throughout the book, and the critical thinking approach is supported in the text and enhanced by the student study guide.

- **Cases:** Each chapter has two to four traditional excerpted cases relevant to traditional legal environment issues as well as to contemporary e-commerce concerns. Some examples are *Specht v. Netscape* on the enforceability of click-wrap assent to on-line contracts, *Universal City Studios, Inc. v. Corley* on the legality of decryption under the DMCA's anticircumvention rules, *RIAA v. Diamond Multimedia* on the copying of on-line music, *A&M Records, Inc. v. Napster* on the P2P sharing of music among strangers, *State St. Bank v. Signature Financial Group* on the patentability of business methods, *Shields v. Zuccarini* on cybersquatting, *PepsiCo, Inc. v. Redmond* on the inevitable disclosure doctrine, *U.S. v. Microsoft*

Corp. on antitrust and network effects of software standards, and *In re GeoCities* on privacy of on-line profiling.

- **Commentary** features highlight controversial or unsettled areas of law, including Automated Bargaining over License Terms, UCITA, Trademarks Meet the Internet, and Employee Privacy versus Employer Liability.
- **International Commentary** features draw in the international aspects of the issues being discussed in the chapter, such as “Trademark Protection for Generic Identifications of Origin” and “Discovery or Disclosure?”
- **Ethical Issues** cover ethical concerns in the business setting, including “Licensing Terms” and “Litigation Threat Chills Freedom of Speech.”
- **Internet Margin Notes** send students to research tasks or additional information.
- **Internet Screens** highlight important Internet locations to help integrate technology issues with text narrative.
- The text is rich with **Examples** of real situations and companies.
- **Chapter Problems** provide review and case problems for each chapter.
- **Figures and Tables** enhance and clarify the chapter coverage, serving as graphic and visual aids.

OTHER COURSE SUPPORT MATERIALS

Extensive additional electronic courseware and instructional support specific to the text are also available.

For the Instructor

An *Instructor's Manual*, prepared by Ernest W. King of the University of Southern Mississippi, and John W. Bagby contains chapter outlines, solutions to case questions, and answers to the end-of-the-chapter questions.

The *Test Bank*, also prepared by Ernest W. King, contains more than 1,300 questions in multiple-choice, true-false, and essay formats, with answers.

PowerPoint® Lecture Slides, prepared by Jimidene Murphy of South Plains College, provide chapter highlights for lecturing.

The West Legal Studies in Business video library is available to qualified adopters of this text. You may be eligible to use selections from the library of West videos, a vast selection covering most business law and legal environment issues. There are some restrictions, and if you have questions, please contact your local Thomson Learning/West Legal Studies sales representative or visit http://www.westbuslaw.com/video_library.html.

For the Student

A *Study Guide*, by Ronald L. Taylor, Metropolitan State College of Denver, provides students with review and study materials. It contains chapter outlines and objectives, as well as review questions in matching, completion, true-false, multiple-choice, short essay, and case problem formats.

For Both Students and Instructors

The text website provides on-line support at <http://bagby.westbuslaw.com>. This website provides links to all URLs in the text, online quizzes with immediate feedback for students, PowerPoint lecture slides that are useful for lectures and for study review, and more.

The West Legal Studies in Business website at <http://www.westbuslaw.com> directs students to the Student Resource Center for case updates.

Web Tutor™ on Web CT or Blackboard is an interactive, Web-based, student supplement that harnesses the power of the Internet to deliver innovative learning aids that actively engage students. The instructor can incorporate Web Tutor as an integral part of the course, or students can use it on their own as a study guide. Benefits to students include automatic and immediate feedback from quizzes and exams; interactive, multimedia, rich explanation of concepts; on-line exercises that reinforce what they've learned; flashcards that include audio support; and greater interaction and involvement through on-line discussion forums.

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Ten free hours of Westlaw, West's computerized legal research, are available for qualified adopters of this text.

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AFTERWORD

The authors have considerable accumulated experience in instruction at various colleges and universities and in creating useful instructional materials. This experience is now adapted in a unique hybrid way to comfortably permit evolution from traditional business law and legal environment instructional approaches to the legal and regulatory environment for the converging economies. The thorough integration of technology law and cyber law into the traditional framework of law accomplished here will equip students with the skills needed for success in the twenty-first century.

John W. Bagby
F. William McCarty

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