



Cyberlaw in Hong Kong

Second Edition

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Preface

Cyberlaw does not readily admit to discrete treatment as a legal topic; the boundaries between cyberlaw and non-cyberlaw remain fuzzy. We have tried to make this book as cyber-specific as possible although, in many cases, the law as it applies (or may be applied) in cyber related issues is often no more than analogy with the real world. We must, however, treat analogies with caution: 'When considering the Internet, it is so often necessary to resort to analogies which, in the nature of things, are unlikely to be complete. This is because the Internet is a new phenomenon.' These are the words of Mr Justice Eady in *Bunt v Tilley & Ors*.

Since the first edition of this work (and perhaps we should call this v 2.0), the law and practice relating to cyber issues has developed at some pace, although there has been a relative dearth of case law in Hong Kong when compared to other leading jurisdictions. No sooner had the ink dried on the printing of the first edition wherein the writer asserted that 'cyber-arbitration [is] too embryonic to be covered in this work' than the Hong Kong International Arbitration Centre was appointed as the centre for resolution of domain name disputes. We have accordingly added a chapter on domain name disputes as resolved through the arbitration process. Readers will appreciate that there have been thousands of arbitral decisions in relation to domain names, and in a work of this kind, a single chapter can, at best, give only an overview.

The new Trade Marks Ordinance, regular amendments to the Copyright Ordinance and the ongoing war against peer-to-peer file sharing have led to significant rewriting of this book. The criminal law, in particular, the use of the Crimes Ordinance and the criminal provisions of the Copyright Ordinance, have come for determination before our courts who have not treated offenders with leniency.

Following precedent in the UK, *Norwich Pharmacal* orders have been obtained in Hong Kong against Internet Service Providers and this procedure is also examined in this new edition. Other important legal developments, including the right of government bodies to interfere with communications; the curse of the Internet (SPAM); and privacy concerns, especially so-called 'cookies', are examined. Copyright law in Hong Kong is in a continuing state of statutory development with proposals for further reform contained in the 'Copyright Protection in the Digital Environment Consultation Document' issued by the Commerce, Industry

and Technology Bureau. It may be some time before these proposals are brought into effect and they may well undergo changes before legislation is enacted. We have not dealt with the provisions to any significant degree, preferring to state the law 'as is' or 'as appears to be' rather than discuss what the law 'might become'.

In the first edition of this work, we were assisted by Mr David Ellis, a partner at Johnson Stokes and Master. David was unable to help us with this new edition, having moved into a more managerial role at his firm. We thank him and his colleagues at JSM for helping to get this project running.

The authors are indebted to Mr David Smith for the chapter on taxation, which has been entirely rewritten to bring it up-to-date. David was formerly a tax partner at KPMG in Hong Kong and although now semi-retired in Australia, continues to provide tax consultancy services to various organisations. David is a regular visitor to Hong Kong and for 15 years has been the author of *Hong Kong Taxation: Law and Practice* (Chinese University Press), a leading textbook on Hong Kong taxation.

We also wish to thank Ms Bonnie Chun and her colleagues at the Hong Kong Domain Name Registration Company for their assistance in providing information for use in preparing the first chapter on Internet governance.

Constructive comments are always most welcome. We would like to conclude by adopting the words of Mr David Latham Brown, formerly a senior lecturer at the University of Leeds, who expressed the aspirations of all authors so succinctly: 'All errors and howlers are those of the authors; they pray to God they may be few.'

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