



# Electronic and Mobile Commerce Law

An analysis of trade, finance, media and  
cybercrime in the digital age

**CHARLES WILD, STUART WEINSTEIN,  
NEIL MacEWAN and NEAL GEACH**

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# Foreword

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I am honoured to have been asked to write the foreword for *Electronic and Mobile Commerce Law: An analysis of trade, finance, media and cybercrime in the digital age*. For the past several years, I have worked with two of the authors, Dr Charles Wild and Dr Stuart Weinstein, on a variety of projects in the fields of cybercrime and cybersecurity. These have included their contributing the UK country chapter to the ongoing series 'Cybercrime and Security', published by Oxford University Press<sup>1</sup>, of which I am the General Editor, and, more recently, their contributing a chapter entitled 'The Centre for the Protection of National Infrastructure: An Evaluation of the UK Government's Response Mechanism to Cyber Attacks on Critical Infrastructures' for the forthcoming text which I have co-authored/co-edited with Dr Eduardo Gelbstein, entitled, *Law, Policy and Technology: Cyberterrorism, Information Warfare, Digital and Internet Immobilization*, to be published by IGI Global in 2010. In addition, one of our more memorable collaborative works was a paper entitled 'Cyber-attacks: What should be the rules of engagement?' presented at the 25th Annual BILETA<sup>2</sup> Conference, 2010, held at the University of Vienna, Austria, in March 2010, which, in turn, has evolved into Chapter 13 of this book. In many respects, it represents what we seek to accomplish as both lawyers and academics: to analyse the ever-changing technological environment in which we live, but, more importantly, to challenge assumptions, query traditional thinking and to encourage original thought in a time period when the legal and policy communities worldwide are searching for new paradigms to apply to issues arising from adoption of Information and Communication Technology. Who would have thought,

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1. ISBN 978-0-379-01281-1.

2. British & Irish Law, Education and Technology Association.

for example, that an ancient Chinese military treatise would have any relevance to policy discussions during the current digital age?<sup>3</sup>

It is fitting that the first piece of legal scholarship published by the University of Hertfordshire Press is focused exclusively on the fields of e-commerce and m-commerce.<sup>4</sup> The University's School of Law has always been at the forefront of innovation, being one of the first Law Schools in the UK to offer both undergraduate courses and Master's Degrees in Electronic Commerce Law, Data Protection Law and Internet Law as far back as 2000. Equally remarkable is the fact that the School of Law was also one of the first to recognise the growing importance of media, spectrum and communications to business, industry and the professions, once again being the first to offer a Master's Degree in Telecommunications Law starting in 2003. In many respects, the School cemented its position as a leading centre of e-commerce and m-commerce law in 2007 when it hosted the 22nd Annual BILETA Conference entitled 'Paper, scissors, stone: Business, law and politics – the E- and M-Commerce debate'. Consequently, the current book not only reflects a decade of academic research but, in the tradition of the School, it is also the first book on the market to examine both electronic and mobile commerce law as well as cybercrime and cybersecurity issues; a unique text with a broad range of topics from a unique group of academics.

This work also comes at a critical juncture in the public debate about the policy and legal implications raised by our dependence on the Internet for commercial, government, education, health, energy, aviation, military and other functions in developed and developing countries worldwide. Just recently, the *Economist*, in an editorial of 1 July 2010 called for the need for greater international co-operation in preventing attacks on computer networks:

The threat is complex, multifaceted and potentially very dangerous. Modern societies are ever more reliant on computer systems linked to the internet, giving enemies more avenues of attack. If power stations, refineries, banks and air-traffic-control systems were brought down, people would lose their lives. Yet there are few, if any, rules in cyberspace of the kind that govern behaviour, even warfare, in other domains. As with nuclear- and conventional-arms control, big

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3. As non-China experts, we are undoubtedly taking liberties with Sun Tzu, however we refer the reader to more in-depth analyses of Sun Tzu on the art of war, as well as discussions by military and policy analysts taking similar liberties. See, e.g. Sun Tzu, *The Art of War: The Denma Translation* (Boston, 2001); <http://www.victoryoverwar.com>, Victory Over War – chapter excerpts, <http://www.suchns.com/chapters2.html>; Victory of War – reviews and comments, <http://www.suchns.com/reviews2.html>; Tim L. Thomas, 'China's Cyber Tool-Striving to Attain Electronic Shi?', in P.C. Reich and E. Gelbstein (eds), *Law, Policy and Technology: Cyberterrorism, Information Warfare, Digital and Internet Immobilization* (Hershey, PA, 2010); James Mulvennon, 'PLA Computer Network Operations: Scenarios, Doctrine, Organizations and Capability', in Roy Kamphausen, David Lai and Andrew Scobell (eds), *Beyond the Strait: PLA Missions Other than Taiwan* (Washington, DC, 2009); 'Capability of the People's Republic of China to Conduct Cyber Warfare and Computer Network Exploitation', US-China Economic and Security Review Commission/Northrop Grumman, 10 September 2009, [http://www.uscc.gov/researchpapers/2009/NorthropGrumman\\_PRC\\_Cyber\\_Paper\\_FINAL\\_Approved%20Report\\_160ct2009.pdf](http://www.uscc.gov/researchpapers/2009/NorthropGrumman_PRC_Cyber_Paper_FINAL_Approved%20Report_160ct2009.pdf).
  4. For the uninitiated, e-commerce or electronic commerce consists of the buying and selling of products or services over electronic systems such as the Internet and other computer networks. Similarly, m-commerce means any transaction, involving the transfer of ownership or rights to use goods and services, which is initiated and/or completed by using mobile access to computer-mediated networks with the help of an electronic device.

countries should start talking about how to reduce the threat from cyberwar, the aim being to restrict attacks before it is too late.<sup>5</sup>

The current state of play in 'cyberwarfare'<sup>6</sup> in relation to national security concerns worldwide is explored in a contribution by Stuart Weinstein, Charles Wild, Allan Cabanlong and myself. A broader examination of the cybercrime environment is provided by Neil MacEwan, who takes the opportunity to explore such evolving issues as Internet child pornography, cyberstalking and online harassment as well as the concept of cyberbullying. Not only do these issues challenge traditional legal concepts and thinking, but they also raise the problems of Internet accountability, anonymity in situations involving individuals seeking economic gain, those with criminal motivations, and state and non-state actors with agendas affecting national security.<sup>7</sup>

Accountability for acts against individuals is currently the subject of one high profile discussion on an international level, with respect to the case of Carla Franklin and the implications of her action against Google.<sup>8</sup> Ms Franklin took Google to court to force the company to reveal the name of the person who had posted YouTube videos of her, and cast aspersions, to the point of labeling her a 'whore'.<sup>9</sup> Libel over the Internet can have a far reaching effect on individuals and, as such, those who defame others over the Internet must not be able to cloak themselves in anonymity in order to avoid liability. However, whilst the innocent must be protected, there is always an argument to be made for a correct balance to be found between free speech and Internet regulation and accountability.<sup>10</sup> The need for one form of delicate balancing act results when avoidance of 'cyber-bullying' can quickly evolve into an environment of censorship and restriction.<sup>11</sup>

The impact of media on people's lives should not be underestimated. According to a new report from Ofcom<sup>12</sup>, people in the UK spend nearly half of their waking lives watching television, texting one another, surfing the Internet, or generally making use of the wide

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5. 'The Threat from the Internet – Cyberwar', *Economist*, 1 July 2010, available at: [http://www.economist.com/node/16481504?story\\_id=16481504&source=features\\_box1](http://www.economist.com/node/16481504?story_id=16481504&source=features_box1).
  6. Cyberwarfare has been defined by Richard A. Clarke, in his book *Cyber War* (New York, 2010), as 'actions by a nation-state to penetrate another nation's computers or networks for the purposes of causing damage or disruption'. For additional definitions, see Pauline C. Reich, 'To Define or Not to Define: Law and Policy Conundrums for the Cybercrime, National Security, International Law and Military Law Communities', in Reich and Gelbstein, *Law, Policy and Technology*.
  7. See S. Brenner, *Cyberthreats: The Emerging Fault Lines of the Nation State* (Oxford, 2009).
  8. J. Scott, 'Columbia Business Grad Files Lawsuit Over YouTube Comment', Reelseo, 18 August 2010, available at: <http://www.reelseo.com/columbia-business-school-grad-files-lawsuit-youtube-comment/>.
  9. Calgary Herald, 'Opinion: Internet accountability needed in Carla Franklin case', 21 August 2010, available at: <http://www.calgaryherald.com/Internet+accountability+needed/3426044/story.html#ixzz0xMddCSVA>.
  10. See, e.g. Daniel J. Solove, 'Free Speech, Anonymity and Accountability', in *The Future of Reputation: Gossip, Rumor and Privacy on the Internet* (London, 2007), <http://docs.law.gwu.edu/facweb/dsolove/Future-of-Reputation/text/futureofreputation-ch6.pdf>.
  11. 'Censorship in Australia – The Internet', [http://en.wikipedia.org/wiki/Censorship\\_in\\_Australia#The\\_Internet](http://en.wikipedia.org/wiki/Censorship_in_Australia#The_Internet); W.H. Dutton and M. Peltu, 'The Emerging Internet Governance Mosaic: Connecting the Pieces', 14 July 2005, Provisional Draft, available at: <http://www.wgig.org/docs/OII-BerkmanJULY.pdf>.
  12. Ofcom, *The Communications Market 2010* (August), available at: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/>.

variety of media and communications technology available to them. The high proportion of time spent by young people on social networking sites, such as Facebook, has surprised a number of people. However, their utilisation of computers and mobile phones goes beyond mere communication in the traditional sense. It also involves an incredible amount of creativity ranging from the production and uploading of videos to YouTube, through participation in online fora or simply 'poking' friends on Facebook. This is the future, as evidenced by Natalie Tran from Australia.

Ms Tran represents the new type of entrepreneur who has emerged as a result of sites such as YouTube. According to TubeMogul, an analytics and advertising company partnered with Microsoft, Ms Tran made \$110,000<sup>13</sup> from the online advertisements associated with her 'look-at-me' videos, making her one of 10 global independent YouTube stars. Her YouTube page has over 740,000 subscribers<sup>14</sup>, and her clip entitled 'How to fake a six-pack' has currently received over 28 million views. Notwithstanding, Ms Tran's 'fifteen minutes of fame', several major Hollywood movies are in the making chronicling the growth of social media. These productions include *The Social Network* which documents the early days of Facebook mogul Mark Zuckerberg, with a second movie planned to explore the Google story and its co-founders Sergey Brin and Larry Page.<sup>15</sup>

Unfortunately, such social media may also be said to have a darker, albeit unintentional, side. The unfortunate death of Michael Jackson was watched live, via a wide range of media, on an international scale. Privacy and a respect for the private lives of celebrities is certainly something which will be at the forefront of discussion for many years to come. Another aspect of this loss of privacy arises when YouTube and other forms of social media become enforcement tools for authorities.<sup>16</sup> The recent case of a video clip of Shakira dancing with her fans in the fountain by Pla de Palau (Barcelona), which was subsequently posted on YouTube has been used by the Spanish Police to fine the pop singer for unauthorised behaviour. While this is hardly liberty threatening, it does nevertheless highlight the way in which media (and information) that is innocently posted, but publicly available, may result in unforeseen consequences. As such, it is worth posing the question as to whether one's expectation of privacy is lost when one posts something on the Internet.<sup>17</sup> It also appears that this is starting to extend beyond the world of 'celebrity'.<sup>18</sup>

Of course, any discussion of YouTube also raises the important point concerning another delicate balance between making content available online and that of copyright

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13. C. Howard, 'Natalie Tran Makes Top 10 YouTube TubeMoguls', *Forbes*, 20 August 2010, available at: <http://blogs.forbes.com/carolinehoward/2010/08/20/natalie-tran-makes-top-10-youtube-tubemoguls/?boxes=financechannelforbes>.

14. *Ibid.*

15. I. Salha, 'Google movies follows Facebook and Youtube Films', *Metro*, 22 August 2010, available at: <http://www.metro.co.uk/film/838638-google-movie-follows-facebook-and-youtube-films>.

16. Pauline C. Reich, 'Social Networking – the Other Side: Cybercrime, Cybersecurity and Privacy Considerations', American Bar Association, Annual Meeting, Section of Real Property, Trusts and Estates Law, San Francisco, 8 June 2010, to be forthcoming on <http://www.abanet.org/rpte/cle/>.

17. *Ibid.*

18. Kurt Opsahl, 'Facebook's Eroding Privacy Policy: A Timeline', <http://www.eff.org/deeplinks/2010/04/face-book-timeline>.

infringement.<sup>19</sup> YouTube is based on the concept that by being a forum on which individuals post content, revenue will be generated through advertising. While YouTube prohibits the uploading of any copyrighted material, it does not, however, pro-actively enforce this position. If a piece of material that has been uploaded is reported to be copyrighted, YouTube will remove it. However, what is the balance between freely available clips and protecting the intellectual property rights of those who produce such content? This is not an easy question to answer, but one into which Stuart Weinstein seeks to provide some insight in his chapters. Certainly, the issue of copyright infringement in this context is one that the courts will have to continue to consider and address more thoroughly in the near future.

There is also the associated debate regarding virtual worlds and the growth of alternate realities. Who owns the rights to the characters and merchandise within these various environments? Who polices these territories? Who regulates the currency within these worlds?<sup>20</sup> These questions are explored by both Marina Hamilton and Charles Wild within the sections dealing with virtual property and electronic finance.

Finally, we come to the way new technologies are changing, forever, the way in which we access the Internet and use it in our daily lives. One need only consider the incredibly high levels of media interest that occurs when Steve Jobs and Apple® role out the latest version of the iPhone® to appreciate the way in which technology has become a permanent part of people's lives. Perhaps unlike any other product currently on the international stage, the iPhone® demonstrates the fact that, in the age of m-commerce, the question of where to draw the line between what is content and what is the medium used to deliver the content is irrevocably raised. The contributions by Neal Geach on spectrum, media services and network access provide an excellent insight into this increasingly important aspect of our lives.

A work of this nature, which is so wide in scope, can only be seen as ambitious in nature. Nonetheless, it is entirely in line with the ambitious, innovative nature of the School of Law and the activities of its team since the beginning of the current millennium. As such, it represents the realm of the possible in terms of what can be achieved when scholars are encouraged to think 'outside the box' and explore new areas of academic enquiry. Finally, it should also be noted that the authors have established a scholarship fund, based on the royalties from this book, for students wishing to pursue a Master's Degree at the University of Hertfordshire's School of Law. It is in light of this ambitious, and philanthropic, undertaking by the contributors to this work that I am delighted to write this foreword and commend it to you.

*Tokyo, Japan*  
*8 September 2010*

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19. See the ongoing Google Books litigation in the US, *Authors Guild et al. v. Google, Inc.*, 05CV8136, [www.groklaw.net/pdf/Google\\_Complaint.pdf](http://www.groklaw.net/pdf/Google_Complaint.pdf); Google Book Search Settlement Agreement, [http://en.wikipedia.org/wiki/Google\\_Book\\_Search\\_Settlement\\_Agreement](http://en.wikipedia.org/wiki/Google_Book_Search_Settlement_Agreement); *The Author's Guild et al. v. Google* (docket entries), <http://dockets.justia.com/docket-newyork/nysdce/1:2005cv0813/6/273913/>.
20. See Martha Neil, 'Attorney Avatars Create Virtual Bar, Virtual Law and Virtual CLE Courses', *ABA Journal*, 1 August 2008, [http://www.abajournal.com/magazine/article/fantasy\\_life\\_real\\_law/](http://www.abajournal.com/magazine/article/fantasy_life_real_law/); Second Life Bar Association, <http://slbarassn.ning.com>.



# Preface

This book is unique in the fact that it combines the traditionally disparate aspects of what may be called 'electronic commerce law', 'cyber law' or 'Internet law'. Consequently, it brings together, in one text, the law relating to online contracts, electronic marketing, online payment systems, Data Protection, various forms of cybercrime as well as the regulation of, and access to, electronic communications networks and services. Alongside this discussion, a number of emerging areas are also considered to provide the reader with a greater appreciation of, and insight into, the wealth of legal issues being faced, including: libel, online gambling, virtual property, cloud computing, smart cards and electronic cash, and the growing use of mobile phones to perform 'traditionally' computer-based activities.

The evolution of the Internet charts a transition from a restricted, academic and predominantly theoretical concept to an open-access, commercially driven, global medium. Its growth has brought concomitant legal concerns which have required responses from both national and international law. However, the pace of research and development within the telecommunications sector has also meant that technology has, once again, enabled such activities to take the next evolutionary step; the utilisation of mobile device platforms. Consequently, no sooner has the law begun to regulate the area of 'electronic commerce' ('e-commerce') than it is being expected to address new, emerging concerns associated with 'mobile commerce' ('m-commerce'). This text is also unique in the fact that it charts the full spectrum of technology-driven, commercially-oriented, and frequently consumer-related, legal issues.

In order to cover such a diverse and rapidly developing area of the law, the writing team has necessarily drawn upon their own specialised areas of research, whether in the form of peer-reviewed conference papers and articles or more commercially driven applied research. The team has also been fortunate to receive contributions from Marina Hamilton and Karen McCullagh whose work has provided additional breadth and richness to the text. However, the aim throughout has been to produce a seamless analysis of the area of electronic commerce and m-commerce law, which will appeal to those who seek a critical insight into this important, ever-growing and constantly-evolving legal arena.

The authors would like to thank Jane Housham and Sarah Elvins at UH Press for their continued encouragement, support and patience during the writing and editorial processes of this book.

*September 2010*

*Charles Wild, Stuart Weinstein, Neil MacEwan, Neal Geach*

# Legislation

## UK Statutes

Accessories and Abettors Act 1861	369
Administration of Justice Act 1970	315
Bank Charter Act 1844	202, 204
Banking Act 1987	202–4
Bills of Exchange Act 1882	199, 204
Civil Jurisdiction and Judgments Act 1982	16, 21–4, 28, 38, 57, 62, 65, 68, 158
Civil Liability (Contribution) Act 1978	256
Coinage Act 1971	198
Communications Act 2003	138, 358, 531
Companies Act 2006	26, 139, 164, 303
Competition Act 1998	148
Computer Misuse Act 1990	155, 360, 362–5, 367–75
Consumer Credit Act 1974	210, 231–2, 234–5, 237–42, 246–56, 258–60
Consumer Protection Act 1987	152–3
Copyright Act 1709 ('Statute of Anne')	108
Copyright, Designs and Patents Act 1988	109–2, 114, 116–25, 132, 139, 331
Coroners and Justice Act 2009	349
Crime and Disorder Act 1998	359
Criminal Attempts Act 1981	365, 367, 369
Criminal Damage Act 1971	370–1
Criminal Justice Act 1988	349, 352
Criminal Justice Act 2003	368
Criminal Justice and Court Services Act 2000	349
Criminal Justice and Immigration Act 2009	353–4
Criminal Justice and Public Order Act 1994	349–50
Currency and Bank Notes Act 1954	199
Currency Act 1983	198
Data Protection Act 1998	141–3, 149
Defamation Act 1996	158–9
Digital Economy Act 2010	107, 136–9, 334–5, 337, 471

Electronic Communications Act 2000	12, 205–7, 209
Financial Services Act 1986	202
Financial Services and Markets Act 2000	202, 210, 215–16, 220, 243, 258
Forgery and Counterfeiting Act 1981	363
Fraud Act 2006	328–9
Freedom of Information Act 2000	142
Gambling Act 2005	296–8, 300–1
Inferior Courts Judgments Extension Act 1882	69
Interception of Communications Act 1985	160
Interpretation Act 1998	204–5, 216
Libel Act 1843	312
Magistrates' Courts Act 1980	369
Malicious Communications Act 1998	358–9
Obscene Publications Act 1959	340
Payment Services Regulations 2009	242–3
Police and Justice Act 2006	362, 365, 368, 372–5
Proceeds of Crime Act 2002	299
Protection from Harassment Act 1997	315, 358–60
Protection of Children Act 1978 (PCA)	349–50, 352
Public Order Act 1986	315, 356
Racial and Religious Hatred Act 2006	356
Regulation of Investigatory Powers Act 2000	160, 186, 207
Sale of Goods Act 1979	232
Sexual Offences Act 2003	349, 361
Statute Law Revision Act 1891	204
Supply of Goods and Services Act 1982	232
Terrorism Act 2000	299
Theft Act 1968	323, 328–9, 362, 369
Torts (Interference With Goods) Act 1977	155
Trade Descriptions Act 1968	145, 152
Trade Marks Act 1994	84–9, 91–4, 98–9, 104, 106, 152
Trade Union and Labour Relations (Consolidation) Act 1992	143
Unfair Contract Terms Act 1977	232, 256
<b>UK Statutory Instruments</b> ('Regulations' unless otherwise indicated)	
Business Protection from Misleading Marketing Regulations (SI 2008/1276)	144–5
Consumer Protection (Distance Selling) Regulations 2000, SI 2000/2334	10, 15, 144, 149, 150, 256–8, 260
Consumer Protection (Distance Selling) (Amendment) Regulations 2005 (SI 2005/689)	256
Consumer Protection from Unfair Trading Regulations 2008 (AI 2008/1277)	144–5, 147, 152–3
Copyright and Related Rights Regulations 2003 (SI 2003, No. 2498)	122, 124–5, 331
Criminal Justice and Immigration Act 2008 (Commencement No. 4 and Saving Provision) Order 2008, No. 2993	353

Electronic Commerce (EC Directive) 2002 (SI 2002/2013)	6, 9, 10, 13–15, 125–7, 144, 151, 159–60, 185
Electronic Money (Miscellaneous Amendments) Regulations 2002, SI 2002/765	202, 214
Electronic Signatures 2002, SI 2002/318	11–12
Financial Services (Distance Marketing) Regulations 2004, SI 2004/2095	258–60
Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544	215, 217, 263
Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002, SI 2002/682	202, 210, 217–18
Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001, SI 2001/2511	214
Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (SI 2001/1335)	217
Patents and Patents and Trade Marks (Fees) (Amendment) Rules (SI 2010/33)	86
Patents and Trade Marks (World Trade Organisation) Regulations (SI 1999/1899)	86
Payment Services Regulations 2009, SI 2009/209	242, 243
Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (SI 1837)	358
Police and Justice Act 2006 (Commencement No. 9) Order 2008 362,	373
Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order (SI 1974/2140)	68
Trade Marks (EC Measures Relating to Counterfeit Goods) Regulations (SI 1995/1444)	86
Trade Marks (International Registration) (Amendment) Order (SI 2010/32)	86
Trade Marks (Proof of Use, etc.) Regulations (SI 2004/946)	86
Trade Marks Rules (SI 2000/136)	86
Trade Marks Rules (SI 2008/1797)	86
Uncertificated Securities Regulations SI 2001/3755	214
Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)	187, 260

## France

Creation and Internet Act 2010	334
--------------------------------	-----

## Germany

Telecommunications ( <i>Telekommunikationsgesetz</i> ) 2004	25
---	----

## USA

US Constitution (1789)	108
Children Online Protection Act 1998 (Copa)	342
Children's Internet Protection Act 2000 (Cipa)	342
Communications Assistance for Law Enforcement Act (CALEA) 1994	308
Digital Millennium Copyright Act 1998	185, 190
Gramm-Leach-Bliley Act	176
HR 2267 aimed at overturning the Unlawful Internet Gambling Enforcement Act	296
HR 2266 aimed at suspending UIGEA whilst awaiting outcome of HR 2267	296
Protect Act 2003	347
Safe Port Act 2006	294
Uniform Computer Information Transaction Act (UCITA)	7
Unlawful Internet Gambling Enforcement Act 2006	294, 296

**EU Legislation** ('Directive' unless otherwise stated)

Access Directive (Directive 2002/19/EC)	399, 406, 415, 418, 420, 424, 427, 444–8, 451, 453–7, 460–4, 467, 481–2, 488, 495
Attacks against Information Systems, Council Framework Decision 2002	365
Audio-visual Services Directive 2010/13/EU	527–8, 538–45, 547–9, 552–62
Authorisation Directive (Directive 2002/20/EC)	399, 439–41, 445, 448, 477, 481, 513
Better Regulation Directive 2009/140/EC	432 502, 507
Brussels Regulation SDM (1999) 348 Final	19
Body of European Regulators for Electronic Communications Regulation 1211/2009	403–6
Brussels Regulation on jurisdiction and recognition and enforcement of judgments (E.C.) No. 44/2001) (Brussels I Regulation)	16–19, 22, 24, 34–69
Brussels II Regulation ((EC) 1347/2000)	34, 44
Citizens' Rights Directive 2009/136/EC	469, 476, 490, 494
Community Framework for Electronic Signatures (Directive 1999/93/EC)	11–12, 206, 208
Copyright and Related Rights 2001/29/EC	114, 122, 124–5, 561, 562
Database Directive (Directive 96/9/EC)	132, 134
Data Protection (95/46)	141–2, 156, 174–5, 180, 435, 437, 445
Electronic Commerce (2000/31/EC) [2000] OJ L178/1	6, 8, 13–15, 19, 97, 125–6, 151, 159–60, 295, 331–2, 445, 534, 536
Electronic Money 2000/28 and 2000/46	202, 210, 214, 216, 218–19, 263
Electronic Privacy Directive (Directive 2002/58/EC)	153, 155–6, 281, 399, 435–7, 445, 477–81, 486, 488
GSM Directive: Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community as amended by directive 2009/114/EC	503
Information Society Directive [1998] OJ L217/18	295
Merger Regulation 139/2004	408, 415
Payment Systems Directive 2007/64/EC of the European Parliament and of the Council on payment systems in the internal market (OJ No L 310, 5.12.2007, p. 1)	243
Regulation No. 2343/2002 (EC, Euratom)	405
Regulation No. 1073/1999 concerning investigations by the European Anti-Fraud Office	405
Regulatory Framework 2002/21	399–403, 405–6, 408, 410–11, 416, 418–19, 421, 423–7, 429–34, 441–9, 454, 458–9, 462, 465, 467, 470–1, 478, 481, 488, 497, 507–9, 512–13, 516, 534
Roaming: Regulation (EC) No. 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community	403, 426, 495–8
Services Directive 06/123 [2006] OJ L376/36	294
TV without Frontiers COM (2006) 49 final	528
Universal Service Directive (Directive 2002/22/EC)	156, 399, 406, 409, 415, 420, 444–5, 447, 469, 471–7, 481, 483–4, 486–8, 491–2, 494, 497, 515

## International Instruments

CyberCrime Treaty (Council of Europe)	328, 347, 349, 355–6, 373–5, 379
Brussels Convention on Jurisdiction and Enforcement of Judgments 1968	16, 22–4, 34, 37–8, 61, 63, 66–7, 158
General Agreement on Trade in Services (GATS)	295
Hague Convention	66
Rome I Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)	171
Rome, Treaty of (E.C. Treaty)	23, 25, 34
TRIPS Agreement 1994	113–14, 135
United Nation's Charter	392
United Nation's Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	347
WIPO Copyright Treaty 1996	124
WIPO Performances and Phonograms Treaty 1996	116, 124
World Intellectual Property Organization Copyright Treaty 1996	114–16

## Cases

<i>O2 Holdings Ltd (2) O2 (UK) Ltd v. Hutchison 3G Ltd</i> [2006] EWHC 534 (Ch)	152
<i>1-800 FLOWERS Inc v. Phonenames Ltd</i> [2002] FSR 12	91, 92
<i>1-800-FLOWERS Trade Mark</i> [2000] FSR 697	92
<i>A&amp;M Records, Inc. v. Napster, Inc.</i> , 239 F. 3d 1004 (Ninth Circuit, 2001)	128, 332
<i>Adams v. Cape Industries Plc</i> [1990] Ch 433	57
<i>Adams v. Lindsell</i> [1818] 1 B&Ald 681	9
<i>Aerotel Ltd v. Telco Holding Ltd and others, and Neal William Macrossan's application</i> [2006] EWCA 1371 (Civ)	136
<i>Alan (WJ) &amp; Co v. El Nasr Export Import</i> [1972] 2 QB 189	227
<i>Alfred Dunhill Ltd v. Diffusion Internationale de Maroquinerie de Prestige SARL</i> [2001] CLC 949	49
<i>Amin Rasheed Shipping Corporation v. Kuwait Insurance Co</i> [1984] AC 50	33–4
<i>Arcado v. Haviland Case 9/87</i> [1988] ECR 1539	45
<i>Argos Case, The</i>	4, 5
<i>Arnold and Fellows</i> [1997] 1 Cr App R 244	350
<i>A/S Awilco of Solo v. Fulvia SpA di Navigazione of Cagliari</i> [1981] 1 Lloyd's Rep. 371	222
<i>A/S Dampskibs Hercules v. Grand Trunk Pacific Railway</i> [1912] 1 K.B. 222	26

xx Electronic and Mobile Commerce Law

<i>Ashcroft v ACLU</i> 542 US 656 (2004)	342
<i>Ashurst v. Pollard</i> [2001] 2 All ER 75 CA	37
<i>Atkins and Goodland v. DPP</i> [2000] 1 WLR 1427	351
<i>Attock Cement Company Ltd v. Romanian Bank for Foreign Trade</i> [1989] 1 All ER 1189	28
<i>Baigent &amp; Anor v. The Random House Group Ltd</i> [2007] EWCA Civ. 24	110
<i>The Banco</i> [1971] P 137	53
<i>Bank of Montreal v. Demakos</i> [1996] 31 OR 757	240
<i>Barclays Bank plc v. Glasgow City Council</i> [1992] 3 WLR 827	48
<i>Barclays Bank of Swaziland v. Hahn</i> [1989] 1 WLR 506	25
<i>Barnes v. Yahoo!</i> No. 05-36189 (9th Circuit 7 May 2009)	188
<i>Benam v. Debono</i> [1924] AC 514	29
<i>Benincasa v. Dentalkit Srl</i> [1997] ECR I-3767 9 (Case C-269/95)	50
<i>Berezovsky v. Forbes</i> [2000] EMLR 643	158
<i>Berezovsky v. Michaels</i> [2000] 1 WLR 1004	34
<i>The Berry</i> [1979] QB 80	53
<i>Beta Computers v. Adobe Systems</i> [1996] SLT 604	8
<i>Black v. Yates</i> [1991] 3 WLR 90	37
<i>Bonnier Media Ltd v. Greg Lloyd Smith and Kestrel Trading Corp</i> [2002] ScotCS 347	92, 101
<i>Boss Group Ltd v. Boss France SA</i> [1996] 4 All ER 970	46
<i>BP Exploration (Libya) Ltd v. Hunt</i> [1976] 1 WLR 788	30
<i>The Brabo</i> [1949] AC 326	29
<i>Branwhite v. Worcester Works Finance Ltd</i> [1969] 1 AC 552	253
<i>Brenner and Noller v. Dean Witter Reynolds Inc</i> Case C-318/93 [1994] ILPr 720	51
<i>The Brimnes</i> see <i>Tenax Steamship Co Ltd v. Reinharte Transoceanica Navigation SA</i>	
<i>Brinkibon Ltd v. Stahag Stahl GmbH</i> [1983] 2 A.C. 34	8, 12–13, 30
<i>British Chiropractic Association v. Singh</i> [2010] EWCA Civ. 350	162
<i>British Horse Racing Board v. William Hill Organization Ltd</i> [2005] EWCA Civ. 863	133–4
<i>British Horseracing Board Ltd, the Jockey Club and the Weatherbys Group Ltd v. William Hill Organization Ltd</i> [2001] 2 CMLR	232
<i>British Sky Broadcasting Group plc v. The Competition Commission</i> [2010] EWCA Civ. 2	530
<i>British Telecommunications Plc v. One in a Million Ltd</i> [1999] RPC 1	98–101, 104
<i>Brostoff v. CKL</i> [1998] PNLR 635	209
<i>Bunt v. Tilley</i> [2006] EWHC 407	185
<i>Butler Machine Tool v. Ex-Cell-O Co</i> [1979] 1 All ER 965	5
<i>Byrne v. Van Tienhoven</i> [1880] 5 CPD 344	9
<i>Calico Printers Association Ltd v. Barclays Bank Ltd</i> [1931] 36 Com Cas. 71	225
'Camel Hair Belting' [1896] AC 199	99
<i>Campbell Discount Co Ltd v. Gall</i> [1961] 1 Q.B. 431	253
<i>Carlill v. Carbolic Smoke Ball Co</i> [1893] 1 QB 256	4
<i>Carlo Silvera v. Faleh Al-Rashidi</i> [1994] ILPr 332 (CA)	24
<i>Chadha &amp; Oiscom Technologies Inc v. Dow Jones &amp; Co Inc</i> [1999] IL Pr 829	34

<i>Chan Nai Ming v. HKSAR</i> [2007] 2 HKC 1; 3 HKC 255	129–31
<i>Re Charge Card Services Ltd</i> [1987] 1 Ch 150	200, 236–7
<i>Charles Duval &amp; Co Ltd v. Gans</i> [1904] 2 KB 685	32
<i>Charter Reinsurance Co Ltd v. Fagan</i> [1997] AC 313	220
<i>The Chikurna</i> see <i>AVS Awilco of Solo v. Fulvia SpA di Navigazione of Cagliari</i>	
<i>Clarke v. Dunraven, The Satanita</i> [1897] AC 59	227
<i>Commission v. Belgium</i> [2000] ECR I-1221 Case C-355/98	541
<i>Commission v. France</i> Case C-262/02	533
<i>Connolly v DPP</i> [2007] EWHC 237 (Admin)	358
<i>Continental Bank NA v. Aeakos Compania Naviera SA and Others</i> [1994] 1 WLR 588; [1994] 2 All ER 540	55
<i>Cordova Land Co Ltd v. Victor Brothers Inc</i> [1966] 1 WLR 793	33
<i>Coven v. O'Connor</i> [1888] 20 QBD 640	29
<i>Cox v. Riley</i> [1986] 83 Cr App R 54	370
<i>Crantrave Ltd (In Liquidation) v. Lloyds Bank Plc</i> [2000] QB 917	229
<i>Cuban Atlantic Sugar Sales Corporation v. Compania de Vapores San Elefetro</i> [1960] 1 QB 187	32
<i>Curtice v. London City and Midland Bank Ltd</i> [1908] 1 KB 239	228
<i>Customs and Excise Commissioners v. Diners Club Ltd</i> [1989] 2 All ER 385, CA	237
<i>Custom Made Commercial Ltd v. Starpa Metallbau GmbH</i> [1994] ILPr 516	47
<i>De Bry v. Fitzgerald</i> [1990] 1 WLR 554	24
<i>De Gavel v. De Gavel (No 1)</i> [1979] ECR 1055	36
<i>Denilauler v. SNC Couchet Freres</i> [1980] ECR 1553	69
<i>Designers' Guild Ltd v. Russell Williams (Textiles) Ltd</i> [2000] 1 WLR 2416; [2001] FSR 11 (HL)	111, 116, 330
<i>De Wolf v. Cox</i> [1976] ECR 1759	65
<i>Distillers Co (Biochemicals) Ltd v. Thompson</i> [1971] AC 458	32
<i>Domicrest Ltd v. Swiss Bank Corporation</i> [1999] QB 548	49
<i>Donaldson v. Beckett</i> , 2 Brown's Parl. Cases 129, 1 Eng. Rep. 837; 4 Burr. 2408, 98 Eng. Rep. 257 [1774]; 17 Cobbett's Parl. Hist. 953 [1813]	108
<i>DPP v. Bignell</i> [1998] 1 Cr App Rep 1	366–7
<i>DPP v. Collins</i> [2006] UKHL 40	358
<i>DPP v. Lennon</i> [2006] EWHC 1203	373
<i>DPP v. Ray</i> [1974] AC 370	328, 362
<i>Dresser UK Ltd and Others v. Falcongate Freight Management Ltd and Others</i> [1991] The Times 9 August	53–4
<i>Dumez France and Tracoba v. Hessische Landesbank</i> Case C-220/88 [1990] ECR 49	48
<i>Dunlop Pneumatic Tyre Co Ltd v. Actien-Gesellschaft für Motor und Motorfahrzeugbau Vorm Cudell &amp; Co</i> [1902] 1 KB 342	27
<i>Durrant v FSA</i> [2003] EWCA Civ 1740	142
<i>EasyJet Airline Co Ltd v. Dainty (t/a easyRealestate)</i> [2002] FSR 6	99
<i>Effer SpA v. Kantner</i> [1982] ECR 825 Case 38/81	46
<i>EF Hutton &amp; Co (London) Ltd v. Mofarrij</i> [1989] 2 All ER 633	33
<i>Elefanten Schuh v. Jacqmain</i> [1981] ECR 1671	45
<i>Ellerman Investments Limited v. Mr and Mrs C-Vani &amp; Anor</i> [2006] EWHC 1442 (Ch)	101
<i>Entores Limited v. Miles Far East Corporation</i> [1955] 2 QB 327	9, 12, 30



<i>Eros LLC v. Linden Research, Inc.</i> US Court for the Northern District of California Case No. 09-CU-4269	189
<i>Eros LLC v. Robert Leatherwood &amp; John 1-10</i> Florida Middle District Court No: 8 2207 Civ 01158	186, 189
<i>Erven Warnink Besloten Vennotschap v. Townend &amp; Sons (Hull) Ltd</i> [1979] AC 731	99
<i>Euromarket Designs Inc. v. Peters (the 'Crate &amp; Barrel' case)</i> [2000] ETMR 1025	91
<i>Exxon Corporation v. Exxon Insurance</i> [1982] RPC 69	117
<i>Fields v. Klaus Kobec Ltd &amp; Anor</i> [2006] EWHC 350 (Ch)	105
<i>Finnish Marine Insurance Co Ltd v. Protective National Insurance Co</i> [1990] 1 QB 1078	29
<i>First Sport Ltd v. Barclays Bank Plc</i> [1993] 3 All ER 789 CA	234
<i>Fisher v. Bell</i> [1961] 1 QB 394	4
<i>Fixtures Marketing Ltd v. Organismos prognostikon agonon podosfairou (OPAP)</i> Case C-444/02	134
<i>Fixtures Marketing Ltd v. Oy Veikkaus Ab</i> Case C-46/02	134
<i>Fixtures Marketing Ltd v. Svenska Spel AB</i> Case C-338/02	134
<i>Football Fixtures cases</i> (Cases 46/02; 338/02 and 444/02)	111
<i>Forthright Finance Ltd v. Ingate (Carlyle Finance Ltd, &amp; Third Party)</i> [1997] 4 All ER 99	255
<i>Forward Trust Ltd v. Hornsby</i> [1996] CCLR 18	251
<i>The Freccia del Nord</i> [1989] 1 Lloyd's Rep 388	53
<i>Gambelli</i> [2003] ECR I-2925	294
<i>Germany v. Parliament and Council</i> Case C-376/98	534
<i>Godfrey v. Demon Internet</i> [1999] 4 All ER 342	159
<i>Gold and Schifreen</i> [1988] 1 AC 1063; [1987] 3 WLR 803	362-3
<i>Goodman v. J Eban Ltd</i> [1954] 1 All ER 763	205
<i>Google France SARL v. Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL</i> (C-238/08)	97
<i>Google France SARL, Google Inc. v. Louis Vuitton Malletier SA</i> (C-236/08)	96-7
<i>Google France SARL v. Viaticum SA, Luteciel SARL</i> (C-237/08)	97
<i>Green v. New Zealand Broadcasting Corp</i> [1989] RPC 469	110
<i>Greenwood v. Martins Bank Ltd</i> [1933] AC 51	209-10
<i>Gromax Plasticulture Ltd v. Don &amp; Low Nonwovens Ltd</i> [1999] RPC 367	88
<i>Gulf Bank KSC v. Mitsubishi Heavy Industries Ltd</i> [1994] 1 Lloyds Rep 323	29
<i>Gutnick v. Dow Jones</i> [2002] HCA 2002	158
<i>The Hagen</i> [1908] P 189	33
<i>Halford v. UK</i> [1997] IRLR 471	160
<i>Handelskwekerij GJ Bier v. Mines de Potasse D'Alsace SA</i> [1978] QB 708 [1976] ECR 1735 (Case 21/76)	48
<i>Hantarex SpA v. SA Digital Research</i> [1993] ILPr 501	44
<i>Hatrex International Transport</i> (Case C398/92) [1994] ILPr 264	25
<i>Henderson v. Jaouven</i> [2002] 2 All ER 705	49
<i>Hendrikman v. Magenta Druck &amp; Verlag GmbH</i> [1996] ECR I-4943 (Case C-78/95)	66
<i>Henn v. Derby v. DPP</i> [1980] AC 850	35
<i>Hoffman v. La Roche v. Commission</i> Case 85/76 [1979] ECR 461	416
<i>Hoffmann v. Krieg</i> Case 145/86 [1988] ECR 645	67-8
<i>Holland v. Bennett</i> [1902] 1 KB 867	32