

E-COMMERCE & INTERNET LAW: TREATISE WITH FORMS 2D 2020

Ian C. Ballon

APRIL 2020
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Key Features of E-Commerce & Internet Law

- ◆ Antitrust in the era of techlash
- ◆ The California Consumer Privacy Act, GDPR, California IoT security statute, state data broker laws, and other privacy and cybersecurity laws
- ◆ Artificial intelligence & machine learning
- ◆ Mobile and online contract formation, unconscionability and enforcement of arbitration and class action waiver clauses
- ◆ TCPA law and litigation - the most comprehensive analysis of the statute, regulations, and conflicting case law found anywhere
- ◆ The Cybersecurity Information Sharing Act (CISA), state security breach statutes and regulations, and the Defend Trade Secrets Act (DTSA) -- and their impact on screen scraping and database protection, cybersecurity information sharing and trade secret protection, & privacy
- ◆ Platform moderation and liability, safe harbors, and defenses
- ◆ Dormant Commerce Clause restrictions on state law regulation of online and mobile commerce
- ◆ The law of SEO and SEM – and its impact on e-commerce vendors
- ◆ AI, screen scraping and database protection
- ◆ Defending cybersecurity breach and data privacy class action suits – case law, trends & strategy
- ◆ IP issues including Copyright and Lanham Act fair use, patentable subject matter, negative trade secrets, rights of publicity laws governing the use of a person's images and attributes, initial interest confusion, software copyrightability, damages in internet and mobile cases, the use of hashtags in social media marketing, new rules governing fee awards, and the applicability and scope of federal and state safe harbors and exemptions
- ◆ Online anonymity and pseudonymity – state and federal laws governing permissible disclosures and subpoenas
- ◆ Sponsored links, embedded links, and internet, mobile and social media advertising
- ◆ Enforcing judgments against foreign domain name registrants
- ◆ Valuing domain name registrations from sales data
- ◆ Applying the First Sale Doctrine to virtual goods
- ◆ Exhaustive statutory and case law analysis of the Digital Millennium Copyright Act, the Communications Decency Act (including exclusions for certain IP & FOSTA-SESTA), the Video Privacy Protection Act, and Illinois Biometric Privacy Act
- ◆ Analysis of the CLOUD Act, BOTS Act, SPEECH Act, Consumer Review Fairness Act, N.J. Truth-in-Consumer Contract, Warranty and Notice Act, Family Movie Act and more
- ◆ Click fraud
- ◆ Copyright and Lanham Act fair use
- ◆ Practical tips, checklists and forms that go beyond the typical legal treatise
- ◆ Clear, concise, and practical analysis

AN ESSENTIAL RESOURCE FOR ANY INTERNET AND MOBILE, INTELLECTUAL PROPERTY OR DATA PRIVACY/ AI/ CYBERSECURITY PRACTICE

E-Commerce & Internet Law is a comprehensive, authoritative work covering law, legal analysis, regulatory issues, emerging trends, and practical strategies. It includes practice tips and forms, nearly 10,000 detailed footnotes, and references to hundreds of unpublished court decisions, many of which are not available elsewhere. Its unique organization facilitates finding quick answers to your questions.

The updated new edition offers an unparalleled reference and practical resource. Organized into five sectioned volumes, the 59 chapters cover:

- Sources of Internet Law and Practice
- Intellectual Property
- Licenses and Contracts
- Data Privacy, Cybersecurity and Advertising
- The Conduct and Regulation of E-Commerce
- Internet Speech, Defamation, Online Torts and the Good Samaritan Exemption
- Obscenity, Pornography, Adult Entertainment and the Protection of Children
- Theft of Digital Information and Related Internet Crimes
- Platform liability for Internet Sites and Services (Including Social Networks, Blogs and Cloud services)
- Civil Jurisdiction and Litigation

Distinguishing Features

- ◆ Clear, well written and with a practical perspective based on how issues actually play out in court (not available anywhere else)
- ◆ Exhaustive analysis of circuit splits and changes in the law combined with a common sense, practical approach for resolving legal issues, doing deals, documenting transactions and litigating and winning disputes
- ◆ Covers laws specific to the Internet and explains how the laws of the physical world apply to internet and mobile transactions and liability risks
- ◆ Addresses both law and best practices
- ◆ Includes the hottest issues, such as IP and privacy aspects of artificial intelligence & machine learning, social media advertising, cloud storage, platform liability, and more!
- ◆ Comprehensive treatment of intellectual property, data privacy and mobile and Internet security breach law

Volume 1

Part I. Sources of Internet Law and Practice: A Framework for Developing New Law

- Chapter* 1. Context for Developing the Law of the Internet
 2. A Framework for Developing New Law
 3. [Reserved]

Part II. Intellectual Property

4. Copyright Protection in Cyberspace
 5. Data Scraping, Database Protection, and the Use of Bots and Artificial Intelligence to Gather Content and Information
 6. Trademark, Service Mark, Trade Name and Trade Dress Protection in Cyberspace
 7. Rights in Internet Domain Names

Volume 2

- Chapter* 8. Internet Patents
 9. Unique Intellectual Property Issues in Search Engine Marketing, Optimization and Related Indexing, Information Location Tools and Internet and Social Media Advertising Practices
 10. Misappropriation of Trade Secrets in Cyberspace
 11. Employer Rights in the Creation and Protection of Internet-Related Intellectual Property
 12. Privacy and Publicity Rights of Celebrities and Others in Cyberspace
 13. Idea Submission, Protection and Misappropriation

Part III. Licenses and Contracts

14. Documenting Internet Transactions: Introduction to Drafting License Agreements and Contracts
 15. Drafting Agreements in Light of Model and Uniform Contract Laws: The Federal eSign Statute, Uniform Electronic Transactions Act, UCITA, and the EU Distance Selling Directive
 16. Internet Licenses: Rights Subject to License and Limitations Imposed on Content, Access and Development
 17. Licensing Pre-Existing Content for Use Online: Music, Literary Works, Video, Software and User Generated Content Licensing Pre-Existing Content
 18. Drafting Internet Content and Development Licenses
 19. Website Development and Hosting Agreements
 20. Website Cross-Promotion and Cooperation: Co-Branding, Widget and Linking Agreements
 21. Obtaining Assent in Cyberspace: Contract Formation for Click-Through and Other Unilateral Contracts
 22. Structuring and Drafting Website Terms and Conditions
 23. ISP Service Agreements

Volume 3

- Chapter* 24. Software as a Service: On-Demand, Rental and Application Service Provider Agreements

Part IV. Privacy, Security and Internet Advertising

25. Introduction to Consumer Protection in Cyberspace
 26. Data Privacy
 27. Cybersecurity: Information, Network and Data Security
 28. Advertising in Cyberspace

Volume 4

- Chapter* 29. Email and Text Marketing, Spam and the Law of Unsolicited Commercial Email and Text Messaging
 30. Online Gambling

Part V. The Conduct and Regulation of Internet Commerce

31. Online Financial Transactions and Payment Mechanisms
 32. Online Securities Law
 33. State and Local Sales and Use Taxes on Internet and Mobile Transactions
 34. Antitrust Restrictions on Technology Companies and Electronic Commerce
 35. Dormant Commerce Clause and Other Federal Law Restrictions on State and Local Regulation of the Internet
 36. Best Practices for U.S. Companies in Evaluating Global E-Commerce Regulations and Operating Internationally

Part VI. Internet Speech, Defamation, Online Torts and the Good Samaritan Exemption

37. Defamation, Torts and the Good Samaritan Exemption (47 U.S.C.A. § 230)
 38. Tort and Related Liability for Hacking, Cracking, Computer Viruses, Disabling Devices and Other Network Disruptions
 39. E-Commerce and the Rights of Free Speech, Press and Expression In Cyberspace

Part VII. Obscenity, Pornography, Adult Entertainment and the Protection of Children

40. Child Pornography and Obscenity
 41. Laws Regulating Non-Obscene Adult Content Directed at Children
 42. U.S. Jurisdiction, Venue and Procedure in Obscenity and Other Internet Crime Cases

Part VIII. Theft of Digital Information and Related Internet Crimes

43. Detecting and Retrieving Stolen Corporate Data
 44. Criminal and Related Civil Remedies for Software and Digital Information Theft
 45. Crimes Directed at Computer Networks and Users: Viruses and Malicious Code, Service Disabling Attacks and Threats Transmitted by Email

Volume 5

- Chapter* 46. Identity Theft
 47. Civil Remedies for Unlawful Seizures

Part IX. Liability of Internet Sites and Service (Including Social Networks and Blogs)

48. Assessing and Limiting Liability Through Policies, Procedures and Website Audits
 49. Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct
 50. Cloud, Mobile and Internet Service Provider Compliance with Subpoenas and Court Orders
 51. Web 2.0 Applications: Social Networks, Blogs, Wiki and UGC Sites

Part X. Civil Jurisdiction and Litigation

52. General Overview of Cyberspace Jurisdiction
 53. Personal Jurisdiction in Cyberspace
 54. Venue and the Doctrine of Forum Non Conveniens
 55. Choice of Law in Cyberspace
 56. Internet ADR
 57. Internet Litigation Strategy and Practice
 58. Electronic Business and Social Network Communications in the Workplace, in Litigation and in Corporate and Employer Policies
 59. Use of Email in Attorney-Client Communications

“Should be on the desk of every lawyer who deals with cutting edge legal issues involving computers or the Internet.”

Jay Monahan

General Counsel, ResearchGate

ABOUT THE AUTHOR

IAN C. BALLON

Ian Ballon is Co-Chair of Greenberg Traurig LLP's Global Intellectual Property and Technology Practice Group and is a litigator in the firm's Silicon Valley and Los Angeles offices. He defends data privacy, cybersecurity breach, TCPA, and other



Internet and mobile class action suits and litigates copyright, trademark, patent, trade secret, right of publicity, database and other intellectual property cases, including disputes involving safe harbors and exemptions, platform liability and fair use.

Mr. Ballon was the recipient of the 2010 Vanguard Award from the State Bar of California's Intellectual Property Law Section. He also has been recognized by *The Los Angeles and San Francisco Daily Journal* as one of the Top Intellectual Property litigators (2009-2020), Top Cybersecurity and Artificial Intelligence (AI) lawyers, and Top 100 lawyers in California.

Mr. Ballon was named a "Groundbreaker" by *The Recorder* at its 2017 Bay Area Litigation Departments of the Year awards ceremony and was selected as an "Intellectual Property Trailblazer" by the *National Law Journal*.

Mr. Ballon was selected as the Lawyer of the Year for information technology law in the 2020, 2019, 2018, 2016 and 2013 editions of *The Best Lawyers in America* and is listed in Legal 500 U.S., *The Best Lawyers in America* (in the areas of information technology and intellectual property) and Chambers and Partners USA Guide in the areas of privacy and data security and information technology. He also serves as Executive Director of Stanford University Law School's Center for the Digital Economy.

Mr. Ballon received his B.A. *magna cum laude* from Tufts University, his J.D. *with honors* from George Washington University Law School and an LLM in international and comparative law from Georgetown University Law Center. He also holds the C.I.P.P./U.S. certification from the International Association of Privacy Professionals (IAPP).

In addition to *E-Commerce and Internet Law: Treatise with Forms 2d edition*, Mr. Ballon is the author of *The Complete CAN-SPAM Act Handbook* (West 2008) and *The Complete State Security Breach Notification Compliance Handbook* (West 2009), published by Thomson West (www.IanBallon.net).

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NEW AND IMPORTANT FEATURES FOR 2020

- > **Antitrust in the era of techlash** (chapter 34)
- > **Platform moderation and liability, safe harbors and defenses** (ch. 49, 4, 6, 8, 37)
- > **Privacy and IP aspects of Artificial Intelligence (AI) and machine learning** (ch. 5, 26)
- > **The California Consumer Information Privacy Act, California's Internet of Things (IoT) security statute, Vermont's data broker registration law, Ohio's safe harbor** for companies with written information security programs, and other new state laws governing cybersecurity (chapter 27) and data privacy (chapter 26)
- > **FOSTA-SESTA** and ways to maximize CDA protection (ch 37)
- > **IP aspects of the use of #hashtags** in social media (ch 6)
- > **The CLOUD Act** (chapter 50)
- > **Making sense of the Circuit Split under the TCPA (3d, 7th and 11th vs. 2d and 9th) & other significant new case law** (ch. 29)
- > **Fully updated 50-state compendium** of security breach notification laws, with a **strategic approach** to handling notice to consumers and state agencies (chapter 27)
- > **Copyright, patent, ADA and other troll litigation – and ways to combat it** (ch. 4, 8, 48)
- > **Applying the single publication rule** to websites, links and uses on social media (chapter 37)
- > **Screen scraping, database protection and use of AI to gather data and information online** (chapter 5)
- > **State online dating and revenge porn laws** (chapter 51)
- > **Expanding and contracting anti-SLAPP case law** construing different state laws (ch 37)
- > **Circuit-by-circuit, claim-by-claim analysis of CDA opinions**
- > **eSIGN case law** (chapter 15)
- > **Website and mobile accessibility** under the ADA and state laws (chapter 48)
- > **Online and mobile Contract formation – common mistakes by courts and counsel** (chapter 21)
- > **Defending cybersecurity and data privacy class action suits** - case law, trends and strategy (chapters 25, 26, 27)
- > **The Music Modernization Act's Impact on copyright preemption, the CDA, and DMCA protection for pre-1972 musical works** (ch 4, 37, 49)
- > **Cybersafety standards and best practices for youth audiences in social media, apps, games & networks** (by Parry Aftab) (ch. 51)
- > Updated **Defend Trade Secrets Act** and **UTSA** case law (chapter 10)
- > **Drafting enforceable arbitration clauses and class action waivers** (with new sample provisions) (chapter 22)
- > **The GDPR, ePrivacy Directive and transferring data from the EU/EEA** (by Francoise Gilbert and Viola Bensinger) (ch. 26)
- > **Patent law** (updated by Josh Raskin) (chapter 8)
- > **Music licensing** (updated by Tucker McCrady) (chapter 17)
- > **Mobile, Internet and Social Media contests & promotions** (updated by Ed Chansky) (chapter 28)
- > **Conducting a risk assessment and creating a Written Information Security Assessment Plan (WISP)** (by Thomas J. Smedinghoff) (chapter 27)
- > **Idea protection & misappropriation** (ch 13)
- > **Revisiting links, embedded links, sponsored links, and SEO/SEM practices and liability** (chapter 9)

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