

Cambridge University Press
0521605229 - Internet Law: Text and Materials, Second Edition
Chris Reed
Frontmatter
[More information](#)

Internet Law

Text and Materials

The common fallacy regarding cyberspace is that the Internet is a new jurisdiction, in which none of the existing rules and regulations apply. However, all the actors involved in an Internet transaction live in one or more existing jurisdictions, so rather than being unregulated, the Internet is arguably the most regulated 'place' on earth. Worse, much of this law and regulation is contradictory and difficult, or impossible, to comply with.

In this book the author takes a global view of the fundamental legal issues raised by the advent of the Internet as an international communications mechanism. This new title helps the reader to understand the approaches and analytical methods that a lawyer requires when dealing with Internet-related issues and explains the problems that every country's law will need to resolve.

The book integrates legal and other materials to support the discussion of how technological, economic and political factors are shaping the law governing the Internet. Global trends in the development of these legal issues are addressed and the effectiveness of potential mechanisms for legal change that are applicable to Internet law are also examined.

This new edition has been substantially updated and will be of particular interest to students studying Internet or information technology law courses, as well as specialist practitioners in computer and electronic commerce law.

Chris Reed is Professor of Electronic Commerce Law at the Centre for Commercial Law Studies, Queen Mary University of London. He has worked exclusively in the computing and technology law field since 1987, and has published widely on many aspects of computer law.

Cambridge University Press
 0521605229 - Internet Law: Text and Materials, Second Edition
 Chris Reed
 Frontmatter
[More information](#)

Law in Context

Editors: William Twining (University College, London) and
 Christopher McCrudden (Lincoln College, Oxford)

Since 1970 the Law in Context series has been in the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political, and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalization, transnational legal processes, and comparative law.

Books in the Series

Ashworth: *Sentencing and Criminal Justice*
 Barton & Douglas: *Law and Parenthood*
 Bell: *French Legal Cultures*
 Bercusson: *European Labour Law*
 Birkinshaw: *European Public Law*
 Birkinshaw: *Freedom of Information: The Law, the Practice and the Ideal*
 Cane: *Atiyah's Accidents, Compensation and the Law*
 Collins: *The Law of Contract*
 Cranston: *Consumers and the Law*
 Cranston: *Legal Foundations of the Welfare State*
 Davies & Freedland: *Labour Law: Text and Materials*
 de Sousa Santos: *Toward a New Legal Common Sense*
 Detmold: *Courts and Administrators: A study in Jurisprudence*
 Diduck: *Law's Families*
 Doggett: *Marriage, Wife-Beating and the Law in Victorian England*
 Dummett & Nicol: *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law*
 Elworthy & Holder: *Environmental Protection: Text and Materials*
 Fortin: *Children's Rights and the Developing Law*
 Glover-Thomas: *Reconstructing Mental Health Law and Policy*
 Gobert & Punch: *Rethinking Corporate Crime*
 Goodrich: *Languages of Law*
 Hadden: *Company Law and Capitalism*
 Harlow & Rawlings: *Law and Administration: Text and Materials*
 Harris: *An Introduction to Law*
 Harris: *Remedies, Contract and Tort*
 Harvey: *Seeking Asylum in the UK: Problems and Prospects*
 Lacey & Wells: *Reconstructing Criminal Law*
 Lewis: *Choice and the Legal Order: Rising above Politics*
 Likosky: *Transnational Legal Process*
 Maughan & Webb: *Lawyering Skills*
 Moffat: *Trusts Law: Text and Materials*
 Norrie: *Crime, Reason and History*
 O'Dair: *Legal Ethics*
 Oliver: *Common Values and the Public-Private Divide*
 Oliver & Drewry: *The Law and Parliament*
 Page & Ferguson: *Investor Protection*

Cambridge University Press
0521605229 - Internet Law: Text and Materials, Second Edition
Chris Reed
Frontmatter
[More information](#)

Palmer & Roberts: *Dispute Processes – ADR and the Primary Forms of Decision Making*
Picciotto: *International Business Taxation*
Ramsay: *Consumer Protection: Text and Materials*
Reed: *Internet Law: Text and Materials*
Richardson: *Law, Process and Custody*
Seneviratne: *Ombudsman: Public Services and Administrative Justice*
Snyder: *New Directions in European Community Law*
Stapleton: *Product Liability*
Turpin: *British Government and the Constitution: Text, Cases and Materials*
Twining: *Globalisation and Legal Theory*
Twining & Anderson: *Analysis of Evidence*
Twining & Miers: *How to Do Things with Rules*
Ward: *A Critical Introduction to European Law*
Ward: *Shakespeare and the Legal Imagination*
Zander: *Cases and Materials on the English Legal System*
Zander: *The Law-Making Process*

Cambridge University Press
0521605229 - Internet Law: Text and Materials, Second Edition
Chris Reed
Frontmatter
[More information](#)

Internet Law

Text and Materials

Second edition

Chris Reed



Cambridge University Press
0521605229 - Internet Law: Text and Materials, Second Edition
Chris Reed
Frontmatter
[More information](#)

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa
<http://www.cambridge.org>

© Chris Reed 2004

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2004

Printed in the United Kingdom at the University Press, Cambridge

Typefaces Minion 9.75/12.5 pt., and Frutiger *System* L^AT_EX 2_ε [T_B]

A catalogue record for this book is available from the British Library

ISBN 0 521 60522 9 paperback

Contents

<i>Preface</i>	xi
<i>Table of UK statutes</i>	xiii
<i>Table of statutes – foreign jurisdictions</i>	xvii
<i>Table of European Communities legislation</i>	xxvi
<i>Table of Conventions and Agreements</i>	xxxii
<i>Table of cases</i>	xxxiv
Introduction	1
1 Aims and methodology	1
2 The technical and economic context	3
1 The Internet as a distributed environment	7
1.1 Introduction	7
1.1.1 The functions of the Internet	8
1.1.2 Performance of those functions	8
1.1.3 The players	8
1.1.4 Types of connection	9
1.1.5 A revised perspective of the Internet	10
1.2 Packet switching, copying and the inchoate nature of internet ‘documents’	11
1.3 The co-operative nature of internetworking and the distributed nature of infrastructure ownership	15
1.4 Resource hosting, mirroring and other hidden elements of the internet	18
1.4.1 Resource hosting	19
1.4.2 Mirroring	20
1.4.3 Other hidden elements	20
1.5 The distribution of computing processes and the virtual site	21
1.6 Penetrating the clouds	22

viii Contents

2	From each according to his ability: actors and activities in the Internet world	24
2.1	Principal actors	24
2.2	Infrastructure providers	26
2.3	Intermediaries	27
2.3.1	Transmission hosts	27
2.3.2	Resource hosts	27
2.3.3	Communication services	31
2.3.4	Transaction facilitation services	35
2.4	The distributed enterprise	37
3	An infinity of scarce resources: ownership and use of Internet resources	40
3.1	Exploring the paradox	40
3.2	Domain names	42
3.2.1	Initial allocation of domain names	43
3.2.2	Legal rights in names – an inevitable conflict	45
3.2.3	Resolution of domain name disputes	52
3.2.4	Can the conflict be resolved?	65
3.3	Making use of third party information resources	66
3.3.1	Licences to re-use Web resources	68
3.3.2	Direct copying of the resource	71
3.3.3	Incorporation of the resource through an automated link	74
3.3.4	User-selected linking	76
3.4	From property to propriety	88
4	New actors on a new stage: intermediary liability in the Internet world	89
4.1	Service provider liability	90
4.1.1	Liability for communication failure	90
4.1.2	Other services	92
4.2	Liability based on information content	94
4.2.1	Copyright	96
4.2.2	Obscenity and indecency	106
4.2.3	Defamation	112
4.2.4	Common elements of intermediary liability	121
4.3	Limitations on intermediary liability	122
4.3.1	Intermediary contracts	123
4.3.2	Statutory limitation and immunity	124

5	On the Internet, nobody knows you're a dog: identity and identification	140
5.1	The problem of identity	141
5.2	Uses of identification	143
5.2.1	Electronic signatures	144
5.2.2	Information licensing	146
5.2.3	Status information	147
5.3	Certification of identity	147
5.3.1	Issue of ID Certificates	147
5.3.2	Using the certificate to prove identity	150
5.3.3	Certificate checking infrastructure	150
5.4	Accreditation schemes	153
5.4.1	Rationale	153
5.4.2	Effects of accreditation	154
5.4.3	Requirements and supervision	155
5.5	Liability of certification authorities	160
5.5.1	General law	161
5.5.2	Statutory liability	170
5.6	Towards a global system?	171
6	Old wine in new bottles: traditional transactions in the Internet environment	173
6.1	Fundamental concepts revisited	174
6.1.1	Property rights in information	174
6.1.2	Signatures	180
6.1.3	Writing	201
6.2	Contracts revisited	203
6.2.1	Contracting via intermediaries	204
6.2.2	Concluding a contract through electronic agents	210
6.2.3	Implied terms in on-line supplies of information	212
7	The long arm of the law: cross-border law and jurisdiction	217
7.1	Where do internet transactions take place?	218
7.1.1	The 'cyberspace' fallacy	218
7.1.2	Localisation in the physical world	218
7.1.3	Localisation in the Internet world – chasing packets	223
7.2	Jurisdictional and regulatory competence	231
7.2.1	Activities undertaken in the jurisdiction	231
7.2.2	Country of origin regulation	250

x Contents

7.3	Human rights and transborder communication	256
7.3.1	Free speech	258
7.3.2	Privacy	262
7.3.3	Home country regulation as a solution?	267
8	Legislative and regulatory arbitrage	269
8.1	Decreasing overheads	269
8.1.1	Reducing the impact of taxation	270
8.1.2	Internet banking and finance	279
8.2	Restricted and prohibited activities	284
8.2.1	Charging for admission to the game or lottery	286
8.2.2	Advertising	287
8.2.3	Use of premises	288
8.2.4	Procurement	288
8.2.5	Is gambling arbitrage possible?	288
8.3	The application of Gresham's law?	289
9	Enforceability in the Internet environment	291
9.1	Public order rules	292
9.1.1	Obscenity	293
9.1.2	Advertising controls	295
9.2	Private rights and consumer protection	296
9.3	Self-regulation – sticks and carrots	300
9.3.1	Unlawful content	301
9.3.2	Privacy	302
9.3.3	Consumer protection	303
9.3.4	Alternative dispute resolution	304
9.4	The characteristics of enforceability	306
10	Facing the legislative and regulatory challenge	307
10.1	Developing new legal concepts	309
10.2	Solving problems of global reach – convergence of national law	310
10.3	Insoluble problems	312
	<i>Index</i>	315

Preface

The genesis of this book lies in the author's experience in teaching computer law to students. Many of the ideas expressed here have been developed in discussion and team teaching with my colleagues of the Information Technology Law Unit, Dr Ian Walden, Lars Davies, Christopher Millard, John Angel, Laura Edgar, Gavin Sutter, Julia Hörnle and Anne Flanagan.¹ Their contributions have been made over a period of years, and cannot now be separately identified. However, I am conscious that much of what is of value in this book is attributable to their own work, and gratefully acknowledge their otherwise uncredited efforts. Of course, all errors and misunderstandings remain my own responsibility. I also take this opportunity to acknowledge the assistance of Mark Lewis, whose assistance in my practice work in the Internet law field has been invaluable and who was kind enough to read and comment on parts of the first edition.

Finally, mention must be made of the collective contribution of the hundreds of students who have painstakingly listened to my lectures on the topics considered in the book and have challenged and refined my thinking. In particular I must thank those of the 1999/2000 University of London LLM cohort who provided research assistance for the first edition on specific topics (Roux de Villiers² and Sajan Poovayya³) and Mr Juan Avellan, PhD researcher at the Information Technology Law Unit for information on electronic signatures and identity certification.⁴

- 1 Who also, whilst studying for her LLM, assisted in research on trade marks and domain names – Chapter 3.2.
- 2 Alternative dispute resolution – Chapter 9.3.4.
- 3 Localisation and applicable law and forum – Chapter 7.1.3.
- 4 Chapters 5, 6.1.2.

Table of UK Statues

Architects (Registration) Act 1931	
ss 2, 3	295
Banking Act 1987	
s 3(1)	279
s 16	199
Sch 3	199
Broadcasting Act 1990	
s 210	110
Sch 15	
para 3	108
Civil Evidence Act 1995	
s 13	180
Computer Misuse Act 1990	
s 3	15, 176, 230
Consumer Credit Act 1974	296
Contracts (Rights of Third Parties) Act 1999	
s 1(1)	91
Copyright Act 1956	102
s 5	101
Copyright, Designs and Patents Act 1988	110
s 3(1)	82
s 4(1)	82
s 5(1)	82
s 7(1)	84
s 16	73
s 16(1)	96
s 16(2)	73
s 17	73
s 17(6)	96, 102
s 18	73, 177
s 20(1)(c)	84
s 23	101

xiv	Table of UK Statues	
	ss 29, 30	74, 177
	s 178	101
	Criminal Justice Act 1988	
	s 160	107
	Criminal Justice and Public Order Act 1994	110
	s 84(4)	107
	Sch 9	
	para 3	108
	Data Protection Act 1998	263
	Defamation Act 1996	114, 137
	s 1	116
	s 1(1)	116, 117
	s 1(1)(b)	116
	s 1(1)(c)	116
	s 1(2)	117
	s 1(3)	116, 117
	s 1(3)(e)	116
	Electronic Communications Act 2000	156, 170, 195
	s 1(1)	156
	s 2(4)	156
	s 3	156
	s 7	200
	s 8(1)	202, 203
	s 8(2)	203
	s 8(2)(a)	202
	Extradition Acts 1870–1935	294
	Finance Act 1993	
	s 40	180
	Financial Services Act 1986	244
	s 3	244
	s 47	244
	s 57	244
	s 57(1)	242, 244
	s 207(3)	242, 245
	Financial Services and Markets Act 2000	240
	s 19(1)	240
	s 21	242, 295
	s 21(2)(b)	242
	s 21(3)	246
	s 28	243
	s 238	295
	s 264	232
	s 418	232

Sch 2	240	
para 22	279, 281	
Food Safety Act 1990		
s 32	201	
Gaming Act 1968	286	
s 1	286	
s 2	286	
s 8	286	
s 23(1)	286	
s 42(1)	287	
s 52(1)	286	
Indecent Displays (Control) Act 1981		
s 1(1)–(3)	111	
Law of Property (Miscellaneous Provisions) Act 1989		
s 1(4)	183	
s 2	201	
Lotteries and Amusements Act 1976	286	
s 2(1)	287, 288	
s 2(1)(b)	286	
s 2(1)(f)	288	
s 2(1)(g)	288	
s 2(2A)	287	
s 23(1)	286	
Obscene Publications Act 1959	108, 294	
s 1(1)	106	
s 1(2)	107, 108	
s 1(3)–(5)	110	
s 2(1)	110	
s 2(5)	108	
Obscene Publications Act 1964		
s 1(2)	109, 294	
Protection of Children Act 1978		
s 1(1)(a)	107	
Regulation of Investigatory Powers Act 2000	313	
Sale of Goods Act 1979		
s 2(1)	146	
ss 13, 14	214	
s 14(2B)	215	
Stamp Act 1891	270	
Supply of Goods and Services Act 1982		
s 13	91	
Telecommunications Act 1994		
s 43	111	

xvi Table of UK Statues

Trade Descriptions Act 1968	296
s 14(1)(a)	295
Trade Marks Act 1984	
s 10	46
Trade Marks Act 1994	52
s 10	51
s 10(3)	48
s 46(1)	48
Unfair Contract Terms Act 1977	123, 160
s 2(2)	123
s 3	123
s 11	123

Statutory instruments

Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013	
reg 17	102
regs 17–19	134
Electronic Signatures Regulations 2002, SI 2002/318	171
Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002, SI 2002/682	284
Magistrates' Court Rules 1968, SI 1968/1920	
rr 78, 81	201
Solicitors Practice Rules 1990	295
Uncertificated Securities Regulations 1995, SI 1995/3272	239

Table of statutes – foreign jurisdictions

Australia

Broadcasting Services Act 1992	
Sch 5	111, 136
s 4	112
s 10	111
s 11	112
s 13	112
ss 30–39	112
ss 40–51	112
ss 82, 83	112
s 91	136
Broadcasting Services Amendment (Online Services) Act 1999	111, 136, 300
Sch 5	300
Commonwealth Trade Practices Act 1974	
s 52	50, 51
Electronic Communications Act 1999	224
s 14	224
s 14(3)–(6)	225
Electronic Transactions Act 1999	200, 309, 310
s 9	202
s 10	200
s 10(1)	195
Privacy Act 1988	267

Belgium

Law of 14 July 1991 on Unfair Practices and the Protection of Consumers	
arts 22–2950	

Canada

Personal Information Protection and Electronic Documents Bill (Bill C-6 of 1999)	
267	
Privacy Act 1983	267

xviii Table of statutes – foreign jurisdictions

China

Measures on the Administration of Internet Information Services 2001	95
Interim Regulations on the Administration of Internet Publishing 2002	95

Denmark

Copyright Act	
art 5	84

Dubai

Electronic Transactions and Commerce Law No 2 of 2002	
art 14	211

Finland

Penal Code	113
------------	-----

France

Civil Code 1382	
art**	85
Intellectual Property Code	84
Telecommunications Law of July 1996	110

Germany

Act Against Unfair Competition	270
art 1	50
Act on the Dissemination of Publications and Media Contents Harmful to Youth (Gestz über jugendgefährdende Schriften und Medieninhalte)	
art 9, 21	300
Banking Act (Kreditwegengesetz)	
art 32(1)	279
Civil Code (BGB)	
art 12	45
Copyright Law (Urheberrechtsgestz)	
art 2(2)	84
Criminal Code (Strafgesetzbuch)	
art 86	260
Digital Signature Act 1997 (Signaturgesetz)	309
art 2(1)	154, 193
art 5(4)	156
art 7(1)	171
art 14(4)	183, 194
art 17(3)	156
art 19	155, 156, 159, 160, 184, 194

Digital Signature Act 2001 (Signaturgesetz)	154, 159, 309
art 2(1)	193
art 4(2)	155
art 5(1)	155, 156
art 5(4)	156
art 10(1)	156
art 11	171
art 17(3)	156
Digital Signature Ordinance (Signaturverordnung)	159
art 3(2)	155, 156, 254
art 5(2)	156
art 8(1)	156
art 10	156
art 12	156
art 13	156
art 15	160
art 16	156
art 16(6)	184, 194
Law to Regulate the Conditions for Information and Communications Services 1997 (luKDG, Multimedia Law)	
art 5(2)	111
art 5(3)	110
art 5(4)	110
Penal Code	261, 262
Signatures Law (Signaturgesetz) 2001	
art 7	148

Hong Kong

Electronic Transactions Ordinance 2001	
s 21(4)(a)	155
s 21(4)(e)	155
Gambling (Amendment) Ordinance 2002	289
Personal Data (Privacy) Ordinance 1996	267

Indonesia

Civil Code	
art 1365	85

Italy

Civil Code	
art 1335	204, 224
art 2598	85

xx Table of statutes – foreign jurisdictions

Luxembourg

Law of 5 April 1993 279

Netherlands

Copyright Act

art 10:1(1) 84

Portugal

Código da Propriedade Industrial 1940

art 260 (ex art 212) 50

Mail Order Act

art 10(3) 201

Singapore

Electronic Transactions Act 1998 133, 137, 160

s 2 196

s 7 202

s 8 196

s 10 133, 134

s 10(3) 134

s 13(2) 144

s 17 196

s 18 154

s 18(1) 200

s 18(2)(a), (b) 200

s 20 154, 198, 199, 252, 253

s 20(b) 198

s 21 200

s 27 156

s 29 156

s 30(1) 170

s 30(2)(d) 171

s 42 158, 159

s 42(2)(h) 156

s 45 171

s 48 156

s 49 156

Electronic Transactions (Certification Authority) Regulations 1999

Pts III, V 254

Spain

Commercial Code

art 54 204

Sweden

Banking Business Act 1987
 Chapter 2
 s 2 279

Switzerland

Banking Act SR 952.0
 art 2(1) 279

United States

Constitution 95, 230, 258, 259
 First Amendment 52, 130, 258, 259
 Advisers Act, 15 USC 80b
 s 203(a) 243
 Antieyebersquatting Consumer Protection Act 1999 (APA) 15 USC §1114 62, 64, 65
 §1114(2)(D)(v) 62
 §1116 64
 §1117 64
 §1125(a)(d)(1)(A)(I) 64
 §1125(a)(d)(1)(A)(II) 64
 §1129(b) 64
 Child Online Protection Act 1998 47 USC 231 258, 263
 Communications Decency Act 1996, 47 USC 129, 133, 137, 138, 258
 §223 131
 §230 129, 130, 131, 132, 133
 Copyright Act 1976 17 USC §101 ff
 §102(a)(1), (5), (6) 82
 §102(b) 83, 84
 §103(a) 82
 §106 96
 §106(1) 73
 §106(3) 73, 177
 §107 74, 177
 §512 125–127
 §512(d) 94
 Digital Millennium Copyright Act 124
 §512(g) 139
 Electronic Communications Privacy Act 1986 263
 Electronic Funds Transfers Act 1978 15 USC §1693 280
 Electronic Signatures in Global and National Commerce Act 2000 159, 194, 198, 310
 s 101(a) 195
 s 101(a)(1) 202

xxii Table of statutes – foreign jurisdictions

s 102(a)	195	
s 102(a)	195	
s 102(a)(2)(A)(ii)	195	
s 106(5)	195	
s 301(a)	202	
Exchange Act, 15 USC 78		
s 6	243	
s 15(a)	243	
Internal Revenue Code		
§§871, 881, 882	271	
Investment Company Act 15 USC 80a	242	
s 3(c)(1)	243	
s 3(c)(7)	243	
s 7(d)	242, 247	
Lanham Act 15 USC 1125(a)	49, 51, 62	
s 2(d)	59	
s 43(a)	50, 51	
Online Copyright Infringement Liability Limitation Act 17 USC §512	124,	
179		
Penal Law		
§225.00(2)	286	
Restatement (Second) on the Conflict of Laws (1972)		
§145	229	
Restatement (Second) of Contracts (1979)		
§3	210	
§56 comments a, b	205	
Restatement (Third) of Foreign Relations Law of the United States (1987)		
§403(1)	231	
Restatement (Second) of Torts (1965)		
§158	79	
§§159–161	80	
§217(a)	80	
§217(b)	80	
§299A comment c	164	
§402A comment i	169	
§552	165, 166, 167	
§552 comment a	166	
§552(2)(a)	166, 167	
§552(2)(b)	167	
§538A164		
§548A164		
§577A (1976)	120	

§652(C)	164	
§652(E)	164	
Restatement (Third) of Unfair Competition (1993)		
§§2–8	50	
Rules of Evidence		
r 1001	202	
Securities Act 15 USC 77	242	
§4(2)	242	
§5	242	
Trademark Act 1946	64	
Trademark Dilution Act 1995 15 USC	49, 65	
§1125(a)(2)	164	
§1125(c) (1996)	48, 63	
§1125(c)(1)	48	
§1125(c)(1)(A)–(H)	49	
Uniform Commercial Code		
§1–201(39)	183	
§§2–314, 2–315	214	
§70-A1-201(39)	198	
Uniform Computer Information Transactions Act 1999	216	
§206	211, 212	
§403	215	
§404	215	
§405	215, 216	
§602	214	
§606(a)(2)	213	
§606(b)	213	
§607	213	
Uniform Electronic Transactions Act 1999	195, 309	
s 2	210, 211	
§14	206, 211	
§15	206	
§15(b)	224	
§15(c)	226	
§15 (d)	224	
18 USC §1465	1111	
18 USC §2256(B)	107	
18 USC §2256(C)	107	
413 US 15 (1973)	106	
12 CFR §7.5008	233	
Regulation D (17 CFR 230.501–508)	242	
r 502(d)	243	

xxiv Table of statutes – foreign jurisdictions

Regulation E 12 CFR part 205	280
Regulation S 17 CFR 230	
r 902(h)(2)	248
r 902k	247

California

Business and Professions Code

§17538	213
--------	-----

Penal Code

§311.1(a)	107
§311.2(a)	107
§311.2(b)	107
§311.11(a)	107, 108
§312.6(a)	110

Connecticut

Regulations for Electronic Signatures on Medical Records, Connecticut General Statutes 1995 Title-19a Chapter-368a

§§19a-25a	194
-----------	-----

Georgia

Computer Systems Protection Act 1991 (Ga Code 1981, 16 September 1990 to 16 September 1994)

52

New York

Penal Law

§225.00(2)	286
------------	-----

Tennessee

Tennessee Code

§39-17-901(1)	109
§39-17-901(8)	107
§39-17-902(a)	109

Utah

Digital Signature Act 1996 (Utah Code §46-3)

194, 309

§103(34)	160
§201(1)(c)	156, 254
§201(1)(d)	160
§201(1)(e)	156
§201(1)(f)	155
s 202	160
§301(1)	156
§302(1)(b)	156

§303(1)	160
§303(3)	171
§309(2)(a)	171
§309(2)(b)	171
§309(2)(c)	171
§401	154, 197, 198
§403	154, 202
§406(1)	200
§406(2)	200
§406(3)(a)	200
§406(3)(b)	200
Digital Signature Rules (Rule 154–10 of the Commerce, Corporations and Commercial Code)	159
r 201	160
r 203	155
r 301	148, 156
r 301(1)(a)	156
r 301(4)(a)	182, 194
r 402	160

Table of European Communities legislation

Decisions

Decision 276/1999 (multiannual Community action plan on promoting safer use of the Internet) 259

Directives

Directive 73/239 252
 Directive 77/7 (First Banking Directive) 250
 Directive 77/388 (Sixth Council Directive) (turnover taxes) 274, 313
 art 6(1) 273
 art 9(2)(e) 226, 240, 241, 273
 art 21(1)(b) 226, 241, 273
 art 28 272
 art 28b(B)(2) 273
 Directive 79/267 252
 Directive 85/374 (product liability)
 art 2 163
 Directive 88/357 (Third Non-Life Insurance Directive) 252
 Directive 89/104 (trade marks)
 art 2 45
 Directive 89/299 (own funds of credit institutions) 250
 Directive 89/646 (Second Banking Directive) 155, 227, 250, 255
 art 20 239
 Annex 234, 239
 Directive 89/647 (solvency ratio for credit institutions) 250
 Directive 90/619 (Third Life Assurance Directive) 252, 297, 298
 Directive 91/250 (legal protection of computer programs)
 art 1(3) 84
 Directive 92/30 (supervision of credit institutions) 155, 250
 Directive 92/49 (direct insurance other than life assurance) 252
 Directive 92/96 (direct life assurance) 252
 Directive 92/121 (monitoring and control of large exposures of credit institutions)
 250

Directive 93/13 (Unfair Terms Directive)	16, 296
art 3(1)	123, 296
art 3(3)	123, 297
art 6	298
art 6(1)	181, 296
Annex	123, 124, 296, 297
para 1(q)	
Directive 93/22 (investment services in the securities field)	252
Directive 95/46 (legal protection of personal data)	108, 263
art 2(a)	263
art 2(d)	263
art 2(e)	263
art 4	264
art 4(1)	264
art 4(2)	264, 265
art 4(3)	264, 265
art 6(1)	264
art 18	264
art 18(2)–(4)	264
art 19	264
art 23	264
art 25	265, 267
art 25(2)	265
art 25(6)	267
art 26(1)	265
art 28	264
Directive 96/9 (Database Directive) (legal protection of databases)	86
art 1(2)	74
art 7	74
Directive 97/7 (Distance Selling Directive)	297, 298
art 2(1)	297
art 2(4)	297
art 3	297
art 4(1)	297
art 4(2)	298
art 5(1)	298
art 6(1)	298
art 6(3)	297, 298
art 7(1)	298
art 8	298
art 11	299
art 11(2)	303
art 12	298

xxviii Table of European Communities legislation

Annex I	297	
Directive 97/66 (Telecommunications Privacy Directive)		263
Directive 98/27	297, 298	
Directive 99/93 (Electronic Signatures Directive)		154, 159, 160, 171, 193, 196, 309, 310
art 2	196, 197	
art 2(1)	197	
art 2(6)	197	
art 2(7)	199	
art 2(9)	199	
art 2(10)	197, 199	
art 2(11)	197	
art 3	156, 157	
art 5	197	
art 5(1)	199, 200	
art 5(2)	149, 154	
art 6(1)	170	
art 6(3)	171	
art 6(4)	171	
art 7	199	
art 7(1)	253	
art 7(2)	253	
art 7(3)	253	
Annex I	149, 197, 199	
Annex II	157, 158, 197, 199	
Annex II(d)	156	
Annex II(f)	156	
Annex II(g)	156	
Annex II(h)	155	
Annex II(i)	156	
Annex III	197	
Directive 2000/12 (Consolidated Banking Directive)		251, 252, 283, 295
art 1	279	
art 5	254	
art 6(1)	254	
art 7(2)	254	
art 17	254	
Directive 2000/31 (E-Commerce Directive)		102, 124, 129, 137, 294, 295, 311
art 3	253	
art 3(2)	270	
art 4	253	
art 11	205, 206	
art 14	117	

art 15(1)	117, 137	
art 17	304	
recital 22	311	
Annex	253	
Directive 2000/46 (E-Money Directive)		283, 284
art 1(3)(b)	283	
art 1(4)	284	
art 1(5)(a)	283	
art 2	283	
art 2(3)	283	
art 4	283	
art 5	284	
art 8(1)(a)	284	
recital 11		
arts 4–7	283	
Directive 2001/29 (copyright and related rights in the information society)		103
art 3	103, 104, 105, 179	
art 5	128, 129	
art 9(1)	203	
art 12	134	
art 13	135	
art 14	135	
art 15	135, 136	
recital 16	105	
recital 17	105	
recital 27	104, 105, 179	
Directive 2002/38 (Sixth VAT Directive)		274, 275, 313
Directive 2002/65 (distance marketing of consumer financial services)		253
art 2(f)	298	

Regulations

Regulation 40/94 (Community Trade Mark)		46
Regulation 44/2001 (Brussels Regulation) (jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)		257
art 2	221	
art 3	221	
art 5	221, 222	
art 5(1)	219	
art 5(3)	220	
art 5(5)	219	
art 15	219, 222, 228	
art 15(1)	219	

xxx Table of European Communities legislation

art 16 219, 222, 228

art 17 219, 222

art 23 219

Recommendations

Commission Recommendation 94/820 (legal aspects of electronic data interchange) 309

Annex 1 194, 205

Table of Conventions

Berne Copyright Convention (Paris Revision 1971)	
art 5(1)	82
art 9(1)	73, 96, 177
art 11(1)(ii)	104
art 11bis(1)(i), (ii)	104
art 11ter(1)(ii)	104
art 14(1)(ii)	104
art 14bis(1)	104
Brussels Convention (European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988)	120, 220
Copyright Treaty (WIPO)	124, 179, 311
art 8	104, 178
Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 1981	263
European Convention on Human Rights and Fundamental Freedoms 1950	
art 8	138, 257
art 10	138, 257
European Model EDI Agreement	205
art 3	205
art 3(1)	194
art 12	205
art 13	205
European Patent Convention	
art 52(2)	176
European Treaty	311
Hague Convention on the Law Applicable to Contracts for the International Sale of Goods	
art 7	219
art 8(1)	219
art 8(2) (a)	219
art 8(2)(b)	219
Lugano Convention	220

xxxii Table of Conventions

Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (WIPO)	46
OECD Model Tax Convention on Income and on Capital 2003	
art 4(1)	271
art 5	235, 236–238
art 5(2)(a)	271
art 7	271
art 7(1)	232, 235
art 7(2)	277
art 9(1)	276, 277
art 12	271, 272
art 12(1)	271
art 14	271
Paris Convention for the Protection of Industrial Property (Stockholm Act 1967)	
art 10bis(2)	50
Paris Convention (WIPO)	46
Rome Convention on the Law Applicable to Contractual Obligations	
art 3	219
art 4	220
art 4(2)	219, 220
art 5	221
art 5(2)	219, 221
Trade Mark Law Treaty (WIPO)	46
UNCITRAL Model Law on Electronic Commerce 1996	194, 309
art 7(1)	194, 195
UNCITRAL Model Law on Electronic Signatures 2001	
art 2(a)	195
art 6	143, 144
art 6(1)	144
art 6(3)(a), (b)	144
art 10	199
United Nations Convention on Human Rights 1948	
art 12	256
art 19	257
United Nations Convention on International Bills of Exchange and International Promissory Notes 1988	
art 3	201
United Nations Convention on the International Sale of Goods 1980	212
art 33	212, 213
arts 41–42	214
Uniform Law on the International Sale of Goods 1964	212
arts 20–22	213
art 52	214