

CONTENTS

<i>Acknowledgements</i>	<i>xi</i>
<i>Table of cases</i>	<i>xiii</i>
<i>Table of statutes</i>	<i>xxiii</i>
<i>Table of international instruments</i>	<i>xxxiii</i>

PART 1 INTRODUCTION **1**

1 An 'Electronic Renaissance' – digital <i>lex mercatoria</i> and digital persona	3
Social media and electronic commerce law	6
Electronic commerce law	7
Internet use in Australia	10
Judicial consideration in Australia	11
Further reading	15
2 The rule of cyberspace	16
Cultural and environmental juxtaposition with cyberspace	17
Cyberspace	18
The rule of law and the rule of cyberspace	23
Spontaneous (or endogenous) order	26
A code of cyberspace	29
Information wants to be free	32
Conclusion	32
Further reading	33

PART 2 SOCIAL MEDIA **35**

3 Social media law	37
Axioms – use of social media	40
Further reading	40
4 Peer-to-peer file sharing	41
Authorisation	45
Further reading	50
5 Cloud computing	51
Origin	53
Cloud providers	54
Legal concerns	55
Legal and practical issues	55
Interference from law enforcement	57

Conclusion	58
Further reading	58
6 Social media and the workplace	59
Status quo – employer's directions	62
Legislation	64
Unfair dismissal	65
Grounds for dismissal but still harsh	66
Relevance of policy – use of policy	67
Outside work hours	69
Public accessibility	71
Damages – lack of evidence	71
Mitigating factors	73
Freedom of political communication	74
Lessons, contracts and policies	80
Further reading	82
7 Defamation in cyberspace	83
Defamation principles	85
Defamation legislation	86
Defamation in cyberspace – actions and issues	88
Statute of limitations	93
The single publication rule	94
The single controversy principle	97
The single cause rule	97
Adventitious or opportunistic conduct	97
Conclusion	98
Further reading	98
8 Privacy in cyberspace	99
Information wants to be free	101
Privacy and regulation	102
Information privacy	102
Australia	105
Abuses	112
Cookies	113
Web bugs	115
<i>International Covenant on Civil and Political Rights (ICCPR)</i>	116
Data protection	117
Personal privacy	118

New Zealand	123
United States	124
Final comment	125
Further reading	125

9 Electronic mail and online presence 126

Email	127
Web page presence	134
Liability for online material	135
Conclusion	139
Further reading	140

10 Censorship online 141

The Australian Communications and Media Authority	142
Internet content	143
US cases	144
Australia	146
Conclusion	150
Further reading	151

PART 3 ELECTRONIC COMMERCE 153

11 Electronic commerce and the law of contract 155

<i>UNCITRAL Model Law on Electronic Commerce and the Communications Convention</i>	156
Electronic contracts	164
Common law	165
Exemptions	167
Validity of electronic transactions	169
Writing	170
Signatures	176
Production of documents	185
Consent	186
Retention of information and documents	193
Time and place of dispatch and receipt of electronic communications	195
Attribution of electronic communication	211
Originals	213
Electronic Case Management System	213
Critique	213
Further reading	214

12 Contracting online	216
Offers online	217
Terms and conditions online	218
Shrinkwrap	219
Electronic affirmation	220
Electronic affirmation for contracts requiring writing and a signature	223
Browsewrap	225
Electronic agents	228
Further reading	229
13 Electronic signatures	230
Traditional signatures	231
Modern signatures	234
Electronic signing	235
Acceptance at face value and risk	237
Functions of signatures	238
Electronic Transactions Acts	240
'Electronic signature' defined	241
Australian Business Number Digital Signature Certificates	247
Secure Socket Layer – Transport Layer Security	247
Further reading	248
14 Copyright issues in electronic commerce	249
The nature of copyright	250
Exclusive rights	252
Infringement	253
Software	257
Right of communication	259
Exemptions	259
Enforcement measures	261
Time-shifting, format-shifting and space-shifting	263
Piracy and enforcement	264
Hyperlinking	264
Further reading	266
15 Trade marks, patents and circuit layouts	267
The nature of trade marks	268
Infringement	269
Hyperlinking	271
Framing	273

Meta-tags	275
Patents for software and internet processes	278
Circuit layout rights	282
Further reading	284
16 Domain names	285
Part 1 – Mapping cyberspace	286
ICANN	290
Nexus requirements	291
Part 2 – Domain name disputes	292
Part 3 – Uniform Dispute Resolution Policies	311
Conclusion	324
Further reading	325
17 Jurisdiction in cyberspace	327
Rules of private international law	328
Effects test	336
Australian cases	337
Early US experience	340
Universal rights	343
<i>Council of Europe Cybercrime Convention</i>	345
Single publication rule	345
Substantial publication	347
Uniform defamation legislation – choice of law	347
Conclusion	348
Further reading	349
18 Cybercrime	350
The Commonwealth <i>Criminal Code</i> and computer crime	352
Telecommunications services	354
Child pornography	355
Assisting suicide	357
Police and security powers	358
Investigative powers	358
Child pornography – international	360
Internet gambling	360
Cyberstalking	363
International approach to cybercrime	365
Spam	366
Identity fraud	374

Phishing	377
Further reading	377
19 Evidence of electronic records	379
Evidence of electronic records	380
Secondary evidence rule	382
Evidence legislation	386
Legislation abolishing the 'original document' rule	388
International perspective	390
Hard copies of electronic records as evidence	394
Originals and copies – envelopes and attachments	395
Conclusion	397
Further reading	398
PART 4 CONCLUSION	399
20 Reflections and conclusions	401
<i>Appendix A Electronic Transactions (Victoria) Act 2000</i>	403
<i>Appendix B Australian Privacy Principles</i>	418
<i>Index</i>	436