CONTENTS

Pre	Preface		
Ack	Acknowledgments		
	Table of Cases		
	Table of European Legislation		
	Table of Statutes		
	Table of Statutory Instruments		
	Table of Abbreviations		
		1	
1	INTRODUCTION	1	8
	PART I		
	THE CHALLENGES OF COMPUTER SOFTWARE		
	DROTECTING AND EVDI OITING DICLITS IN SOUTHALADE		
2	PROTECTING AND EXPLOITING RIGHTS IN SOFTWARE – INTELLECTUAL PROPERTY RIGHTS	5	
	INTRODUCTION	5	
	THE SCOPE OF PROTECTION	21	
	The situation in the US	23	3
	The situation in the UK	35	,
	REVERSE ENGINEERING AND DECOMPILATION	47	7
	THE 'SOFTWARE DIRECTIVE'	51	
	UK implementation of the Software Directive	54	
	Sui generis rights revisited	58	3
	PATENTS AND COMPUTER PROGRAMS	60	
	Decisions of the board of appeals to the EPO	69	
	Case law in the UK	75)
	A comparison with the US system	80)
	Current proposals	81	
	INTELLECTUAL PROPERTY RIGHTS IN DATABASES	82)
	THE DATABASE DIRECTIVE	84	
	CONCLUDING REMARKS	100)
3	PROTECTING AND EXPLOITING RIGHTS IN SOFTWARE – CONTRACT	101	
	INTRODUCTION	101	
	Types of contract	101	
	Bespoke and standard software	101	
	The software licence	101	
	Goods or services or something else?	102)
	Scope of the chapter	102)
	TERMS	103	3
	COPYRIGHT OWNERSHIP	105	,
	THE LICENCE	106)
	SOURCE CODE	107	7
	EC DIRECTIVE	110)
	Basic use of software	110)
	Back-up copies	111	
	Error correction	112)
	THE 'SHRINK WRAP' LICENCE	113	3
	Acquisition contract	114	Ŀ

	Opening the envelope	116
	Pragmatism	118
4	DEFECTIVE SOFTWARE – CONTRACT	121
	INTRODUCTION	121
	BUGS AND BREACHES	121
	Precontractual statements: terms and misrepresenttions	127
	Precontractual statements becoming terms	128
	Precontractual statements as misrepresentations	131
	Entire agreement clauses	133
	SYSTEM/SOFTWARE SPECIFICATIONS	137
	Terms: categorising the contract	138
	An initial look at the court's approach	139
	Goods: definition and arguments	141
	Further issues	146
	Appropriateness	147
	Services	149
	The supply of software	152
	IMPLIED TERMS: FITNESS FOR PURPOSE ETC.	153
	SALE BY DESCRIPTION – S 13	155
	'By description'	155
	What constitutes a 'description' for the purposes of s 13?	157
	SATISFACTORY QUALITY	162
	Sale 'in the course of a business'	164
	'Goods supplied under the contract'	166
	Exceptions	166
	What constitutes satisfactory quality?	168
	FITNESS FOR THE BUYER'S PARTICULAR PURPOSE – S 14(3)	172
	Particular purpose	172
	SALE BY SAMPLE	178
	RELEVANCE OF THE IMPLIED TERMS	179
	ACCEPTANCE TESTS	179
	Damages	180
	EXEMPTION CLAUSES	182
	CONSTRUCTION	183
	UNFAIR CONTRACT TERMS ACT 1977	184
	Scope of the Act	191
	The active sections	193
	Definitions – 'deals as consumer'	194
	Definitions – the 'requirement of reasonableness'	195
	UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999	203
5	DEFECTIVE SOFTWARE - PRODUCT LIABILITY AND TORT	213
	INTRODUCTION	213
	The CPA 1987	213
	Is software a product?	214
	Is there a defect?	219
	Causation	221
	The development risks defence	223
	Negligence	227

PART II

THE CHALLENGES OF COMPUTER NETWORKS

6	E-COMMERCE	241
	INTRODUCTION	241
	Scope	241
	Global nature	242
	Electronic data interchange (EDI)	243
	Regulation	243
	Scope of the chapter	251
	JURISDICTION AND THE GOVERNING LAW	252
	JURISDICTION	252
	EC Regulation No 44/2001 on jurisdiction and the recognition and	
	enforcement of judgments in civil and commercial matters	252
	THE GOVERNING LAW	263
	The applicable law – basic rule and limits	266
	SOME ASPECTS OF CONTRACTING BY ELECTRONIC MEANS	271
	Introduction	271
	'Automated contracting'	272
	Offer or invitation to treat?	273
	Acceptance – effective on receipt or on posting?	275
	Law governing formation	282
	Formalities	284
	WRITING, SIGNATURE, ETC	284
	Introduction	284
	Writing, documents and notices	285
	Signature	292
	Formalities – governing law	298
7	PROTECTING THE PRIVATE INDIVIDUAL	299
	INTRODUCTION	299
	DATA PROTECTION: THE NATURE OF THE PROBLEM	299
	DATA PROTECTION AND PRIVACY	303
	REGULATORY APPROACHES AND INITIATIVES	309
	THE DATA PROTECTION DIRECTIVE (95/46/EC)	322
	PROVISIONS OF DIRECTIVE 95/46/EC	323
	The data protection principles	325
	Criteria for lawful processing	326
	Rights of data subjects	328
	Notification	331
	Exemptions	332
	Transborder data flows	333
	DATA PROTECTION IN THE UK	343
	THE DATA PROTECTION PRINCIPLES	347
	Principle 1	347
	Principle 2	358
	Principle 3	358
	Principle 4	360
	Principle 5	361

	Principle 6	362
	Principle 7	362
	Principle 8	363
	Rights of the data subject Administration of the Act	363
	Exemptions	368 373
	FURTHER ASPECTS OF DATA PROTECTION	
	DEFAMATION	380
	Is it libel or slander?	391 392
	Is the offending material defamatory?	393
	Publication	395
8	POLICING 'CYBERSPACE'	419
O		
	INTRODUCTION COMPLETED EDALID	419
	COMPUTER FRAUD	421
	COMPUTER MISUSE ACT 1990	433
	Computer misuse legislation in practice	447
	Viruses and similar programs	449
	REGULATION OF CONTENT ON COMPUTER NETWORKS EUROPEAN AND INTERNATIONAL INITIATIVES	455
	CONCLUDING REMARKS	477
^		486
9	ASPECTS OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS ON THE INTERNET	190
		489
	INTRODUCTION	489
	COPYRIGHT	489
	LIABILITY OF INTERNET SERVICE PROVIDERS	494
	TECHNOLOGICAL CIRCUMVENTION	499
	COPYRIGHT AND FILE SHARING	504
	ISSUES RAISED BY LINKING ON THE WORLD WIDE WEB	511
	DOMAIN NAMES	524
	TRADEMARKS AND DOMAIN NAMES	526
	DOMAIN NAME DISPUTES	528
	Entitlement to use the name on both sides	528
	Cybersquatting	530
	Uniform Dispute Resolution Policy (UDRP)	538
	SUMMARY	542
Bil	bliography	543
Inc	Index	