Contents

TABLE OF CONTENTS

NOTE TO TEACHERS & LIBRARIANSXVIIHOW TO USE THIS BOOKXVIIPURCHASING COPIES OF THIS BOOKXVIIPREFACE TO THE CURRENT EDITIONXVIIPREFACE TO THE 2ND EDITIONXIXPREFACEXX

ACKNOWLEDGMENTS XXI DISCLAIMER XXI INTRODUCTION XXIII

PART ONE: INTRODUCTION TO LAW

CHAPTER 1: INTRODUCTION TO LAW

INTRODUCTION TO LAW 3 How Many Jurisdictions? 3 Federalism 4 The American Court System 4 Jurisdiction and Venue 8

Personal Jurisdiction 9 Subject Matter Jurisdiction 9 In Rem Jurisdiction 10 Jurisdiction in Cyberspace 10 Jurisdictional Examples 11 Jurisdictional Balance 13 Anatomy of a Court Decision 14 Chapter 1 Endnotes 16

PART TWO: INTELLECTUAL PROPERTY

CHAPTER 2: COPYRIGHT BASICS 21

THE COPYRIGHT ACT 21 EXCLUSIVE RIGHTS OF THE COPYRIGHT OWNER 22 FILING A COPYRIGHT 22 THE SYMBOL 22 LENGTH OF PROTECTION 22 WORK-MADE-FOR-HIRE 24 ELEMENTS OF A CIVIL COPYRIGHT INFRINGEMENT CLAIM 25 DEFENSES TO A CIVIL COPYRIGHT INFRINGEMENT CLAIM 25 PUBLIC DOMAIN 25

INDEPENDENT CREATION 26 DE MINIMUS COPYING 26 "FAIR USE" DOCTRINE 27 PARODY 28

TRANSFORMATIVE USE 29

CRIMINAL INFRINGEMENT 32

32 DAMAGES

...

VIII

ALTERNATIVE CREATOR RIGHTS PROTECTIONS 33

THE VISUAL ARTISTS RIGHTS ACT 33

CREATIVE COMMONS 34

CHAPTER 2 ENDNOTES 36

CHAPTER 3: COPYRIGHT INFRINGEMENT BY WEB SITE CONTENT 41

45

COPYRIGHT INFRINGEMENT 41

DIRECT INFRINGEMENT OF WEB SITE CONTENT 42

IF IT IS NOT YOUR COPYRIGHT, DO NOT PUT IT ON YOUR WEB SITE 42

BE SURE IT IS REALLY YOURS! 43

DIRECT INFRINGEMENT OF THE WEB SITE ITSELF 43 CONTRIBUTORY INFRINGEMENT OF WEB SITE CONTENT 44

CONTRIBUTORY INFRINGEMENT THROUGH LINKING HYPERTEXT LINKING ISSUES 45 NLINE LINKING SSUES 49 DEEP-LINKING ISSUES 50 FRAMING ISSUES 51 CHAPTER 3 ENDNOTES 52

CHAPTER 4: COPYRIGHT INFRINGEMENT BY FILE-SHARING THE DIGITAL MILLENNIUM COPYRIGHT ACT 55 THE EFFECT OF THE DMCA — BEFORE AND AFTER 57 PEER-2-PEER NETWORKING 57

.

CONTRIBUTORY INFRINGER 58 A DEFEAT FOR THE RECORDING INDUSTRY 59 VICARIOUS INFRINGEMENT 59 ILLEGAL MUSIC FILE-SHARING 60 THE INDUCE ACT 65 A VICTORY FOR THE RECORDING INDUSTRY 66 THE FIRST SALE DOCTRINE 6/ CHAPTER 4 ENDNOTES 69

Contents

CHAPTER 5: TRADEMARK BASICS 73

THE LANHAM ACT73FILING A TRADEMARK73TRADEMARK SEARCH74TRADEMARK REGISTRATION74INTERNATIONAL TRADEMARKS75EUROPEAN REGISTRATION75THE MADRID SYSTEM76

THE R SYMBOL77TRADEMARK INFRINGEMENT AND DILUTION77TRADEMARK INFRINGEMENT OR PARODY?79DIRECT AND CONTRIBUTORY INFRINGEMENT80CHAPTER 5 ENDNOTES81

CHAPTER 6: TRADEMARK AND THE INTERNET 83

ARE DOMAIN NAMES PROPERTY? 83 DOMAIN NAME TRICKS 85

DOMAIN MISSPELLINGS 85

Mousetrapping 86

86 PAGEJACKING THE TRUTH IN DOMAIN NAMES ACT 86 87 CYBERSQUATTING ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT 87 CYBERPOACHERS 88 Personal Names as Domain Names 88 SHARED DOMAIN NAME 92 UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY 93 Social Network Subdomains 95 SEARCH TERMS AND INFRINGEMENT 95 META TAGS 95 KEYWORD ADVERTISING 96

CHAPTER 6 ENDNOTES 98

CHAPTER 7: PATENTS & TRADE SECRETSPATENTS103FILING THE APPLICATION105THE PATENT APPLICATION105WHO IS THE PATENT HOLDER?106PATENTS AND THE INTERNET106PATENT INFRINGEMENT107

103

INTERNATIONAL PATENTS 108 TRADE SECRETS 109 MISAPPROPRIATION OF TRADE SECRETS 109 CHAPTER 7 ENDNOTES 110

PART THREE: CYBERCRIMES

.

CHAPTER 8: SPAM 115

WHERE DOES SPAM COME FROM? 115 STREETWISE TIPS TO AVOID SPAM 116 THE CAN-SPAM ACT 117 STATE SPAM LAWS 118 120 FOREIGN SPAM LAWS USING EXISTING U.S. LAWS TO FIGHT SPAM 120 THE COMPUTER FRAUD AND ABUSE ACT 121 121 MURKING MAIL BOMBS 121 PERMISSION-BASED MARKETING 121 CHAPTER 8 ENDNOTES 121

CHAPTER 9: SOCIAL ENGINEERING AND IDENTITY THEFT 125

E-mail Spoofing 125 Phishing 126 Identity Theft 128 Social Security Numbers 129 Safeguard Your ID Information 131 The Identity Theft Penalty Enhancement Act 133 Chapter 9 Endnotes 134

CHAPTER 10: CYBERCRIMES USING TECHNOLOGY 137

COOKIE POISONING 137 137 MALWARE Adware vs. Spyware 138 139 Ransomware DRIVE-BY DOWNLOAD 140 COMPUTER TRESPASS 140 WARDRIVING, PIGGY-BACKING, AND TELECOMMUNICATIONS THEFT 141 POD SLURPING 142 ELECTROMAGNETIC KEYBOARD SNIFFING 143 CHAPTER 10 ENDNOTES 143

CONTENTS

XI

CHAPTER 11: CYBERCRIMES AND INDIVIDUALS 145

- THE MULE SCAM 145
- CYBERSTALKING 146
- FEDERAL STATUTES 147
 - THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934 147 THE USA PATRIOT ACT 147
 - THE WIRE WAGER ACT AND ONLINE GAMBLING
- VIRTUAL CRIME 153

CHAPTER 11 ENDNOTES 154

PART FOUR: PRIVACY

CHAPTER 12: PRIVACY BASICS 159

THE RIGHT TO PRIVACY 159 APPROPRIATION (THE RIGHT OF PUBLICITY) 160 INTRUSION ON SOLITUDE OR SECLUSION 162 PUBLIC DISCLOSURE OF PRIVATE FACTS 164 FALSE LIGHT IN THE PUBLIC EYE 164

PRIVACY DEFENSES 165 FEDERAL LAWS AFFECTING PRIVACY 165 PUBLIC RECORDS 166 INFORMATION BROKER LIABILITY 168 INSURER LIABILITY 169 VOLUNTARY DISCLOSURE 169 JOB SEARCH WEB SITES 170 VIRTUAL TOUR WEB SITES 170 SOCIAL NETWORKS 171 THE ELECTRONIC TRAIL 174 NON-U.S. PRIVACY LAWS 174 CANADIAN PRIVACY LAWS 175

THE EUROPEAN UNION PRIVACY DIRECTIVE 175 CHAPTER 12 ENDNOTES 176

CHAPTER 13: PRIVACY AT WORK 179

PRIVACY AT WORK 179 WHO CAN READ YOUR E-MAIL? 180 180 EMPLOYERS 185 CO-WORKERS

Hackers 186 Mistaken Recipients 186 Internet Service Providers (ISPs) 186 Law Enforcement Officials 188 A Party in a Lawsuit 188 Privacy and Work — Lifestyle Privacy 190 Chapter 13 Endnotes 193

XII

CHAPTER 14: THE EXPECTATION OF PRIVACY 197

EXPECTATION OF PRIVACY INTRODUCTION 197 DATA COLLECTION 197 **ISP SUBSCRIBER INFORMATION** 199 SEARCH QUERIES 200 DATA RETENTION 201 DATA BREACHES 203 TYPES OF DATA BREACHES 204 EXPECTATION OF PRIVACY 205 Chat Rooms 205 E-MAIL: LOVE ME DO 207 E-MAIL: TILL DEATH DO US PART 208 Social Networks 209 IN ONE'S OWN HARD DRIVE 210 SPYWARE 215 **TERRORISM INFORMATION AWARENESS PROJECT** 215 CHAPTER 14 ENDNOTES 215

CHAPTER 15: WEB SITE PRIVACY POLICIES 221

DEFINE "NEVER" 221 Web Site Privacy Policies 223 Ingredients for a Good Privacy Policy 225

GENERAL ELEMENTS 225 SPECIFIC ELEMENTS 225 IF NO ONE HEARD THE TREE FALL, DID IT MAKE A NOISE? 227 BEHAVIORAL MARKETING 228 DEEP PACKET INSPECTION 230 BEHAVIORAL MARKETING AND PRIVACY POLICIES 232 SOCIETY, TECHNOLOGY, AND THE LAW 233 233 CHAPTER 15 ENDNOTES

CONTENTS

XIII

CHAPTER 16: SOCIAL NETWORKS 237

SOCIAL NETWORKS237CACHES, LIKE DIAMONDS, ARE FOREVER245REPUTATIONAL MANAGEMENT245SOCIAL MEDIA MONITORING247CHAPTER 16 ENDNOTES248

CHAPTER 17: PRIVACY AND CHILDREN 251

SOUPY SALES ... AND THE NAIVETE OF KIDS 251 PROTECTING CHILDREN FROM MARKETERS AND OTHER PREDATORS 251 CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA) 253 COPPA AND COPA 254 TO CATCH A PREDATOR 254 WEB MONITORING SOFTWARE 255 INAPPROPRIATE MISAPPROPRIATION? 256 SOCIAL INTERACTION IN THE CYBER-ENVIRONMENT 256 "SHOW AND TELL" ON THE INTERNET 257 WHAT KIDS ARE POSTING 257 WHERE KIDS ARE POSTING 261 IS IT A GOOD OR BAD THING? 261 CHAPTER 17 ENDNOTES 262

PART FIVE: FIRST AMENDMENT FREE SPEECH · FREE PRESS

CHAPTER 18: THE COMMUNICATIONS DECENCY ACT § 230 267

274

DEFAMATION 267

Defenses to Defamation 269

FORUMS FOR POTENTIAL DEFAMATION 269

§ 230 OF THE COMMUNICATIONS DECENCY ACT 270

COMMON LAW APPROACH 270 ENACTMENT 270 No TAKEDOWN PROVISION 272 THE FAKE PROFILE CASES 273 DEFAMATION VERSUS ANONYMOUS FREE SPEECH NO RECOURSE? 277 LIMITATIONS ON § 230 IMMUNITY 279 SUMMARY OF CDA § 230 282 CHAPTER 18 ENDNOTES 284

CHAPTER 19: FREE SPEECH 289

Marketplace of Ideas289Strategic Lawsuits Against Public Participation290Tortious Interference with Business Relationship290Securities Fraud291Cybergripers292Social Boundaries of Free Speech295

Prisoners and Free Speech 295 Chapter 19 Endnotes 296

XIV

CHAPTER 20: BLOGS 299

Defamation in a Blog 299 First Amendment Protection 301 Employee Bloggers 302 Breach of Contract 302 Fired for Blogging 302 Restrictions Imposed on Bloggers 304 Student Blogs 304

Lawyer Blogs 312 Military Blogs 313 News Blogs 314 Vlogs 317 Blogola 318 Chapter 20 Endnotes 318

CHAPTER 21: OBSCENITY AND PORNOGRAPHY 325

"BUT I KNOW IT WHEN I SEE IT" 325

FEDERAL OBSCENITY STATUTES 326

.

THE COMMUNICATIONS DECENCY ACT (CDA) § 223 326 THE CHILD ONLINE PROTECTION ACT OF 1998 (COPA) 327 THE CHILDREN'S INTERNET PROTECTION ACT OF 2000 (CIPA) 328 Obscene Words 328 CHILD PORNOGRAPHY 329 THE PROTECT ACT 331 **OTHER CHILD PROTECTION STATUTES** 332 WHAT IS "POSSESSION"? 333 CHAPTER 21 ENDNOTES 334

Contents

XV

CHAPTER 22: HATE SPEECH AND REPRESSION 337

Online Harassment 337 Happy Slapping 342 Hate Speech on the Internet 343 Student Hate Web Sites 344 Remedies to Hate Speech 344 Hate Speech in Foreign Jurisdictions

REPRESSION OF ONLINE SPEECH 346

WEB SPEECH UNDER TOTALITARIANISM 350 CHAPTER 22 ENDNOTES 352

PART SIX: WEB CONTRACTS

364

345

CHAPTER 23: WEB CONTRACTS 359

BASIC PRINCIPLES OF CONTRACT LAW 359

Affirmative Defenses 361

Remedies 363

Assignment and Delegation 363

Electronic Signatures 364 The Uniform Electronic Transactions Act (UETA) The E-SIGN Act 365 E-mails as a Signed Writing 365 Terms of Use Agreements 365

PRIVACY POLICIES366MEMBERSHIP AGREEMENTS367SHRINK-WRAP AGREEMENTS367CLICK-WRAP AGREEMENTS367BROWSE-WRAP AGREEMENTS367ISP CONTRACTS368

NOTIFICATION OF CHANGES 368 UNILATERAL CONTRACTS 369 WEB SITE DEVELOPMENT AGREEMENTS 370 CHAPTER 23 ENDNOTES 372

PART SEVEN: WEB 2.0 AND BEYOND

CHAPTER 24: ISSUES ON THE HORIZON 377

ISSUES ON THE HORIZON 377

439

6

INTERSTATE COMMERCE AND THE INTERNET 378 INTERNET ACCESSIBILITY FOR THE DISABLED 381 FREEDOM OF ONLINE ASSOCIATION 384 NET NEUTRALITY 387 AMBUSHED BY PORN 388 "O' BRAVE NEW WORLD THAT HAS SUCH THINGS IN IT" 389 A WIKI IS NOT HAN SOLO'S CO-PILOT 389 RSS 390 PODCASTING — INVASION OF THE BYTE-SNATCHERS 391 Metadata 392 e-Books 393 THE BLAME GAME 393 THE NEW NATION-STATES 394 CHAPTER 24 ENDNOTES 395

APPENDIX 399

GLOSSARY 401 ACRONYMS & ABBREVIATIONS 415 CASE INDEX 419

XVI

STATUTE & TREATY INDEX 425 **U.S.** CONSTITUTION 425 425 U.S. FEDERAL STATUTES U.S. STATE STATUTES 427 FOREIGN STATUTES 428 CONVENTIONS & TREATIES 428 TOPIC INDEX 429 A WORD ABOUT STYLE 437 AUTHOR BIOGRAPHY 438 Also Available from Amber Book Company COLOPHON 442

DIAGRAMS & CHARTS

Figure 1-1: Jurisdiction3Figure 1-2: Federalism4Figure 1-3: Court System5Figure 1-4: Federal Appellate Courts ChartFigure 1-5: Anatomy of a Court Decision14Figure 4-1: File-Sharing Networks58Figure 16-1: Social Networks239