CONTENTS

Acknowledgements xi
Table of cases xiii
Table of statutes xxiii
Table of international instruments xxxiii

PART 1 INTRODUCTION

1 An ‘Electronic Renaissance’ – digital lex mercatoria 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

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
## 6 Social media and the workplace

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status quo – employer’s directions</td>
<td>62</td>
</tr>
<tr>
<td>Legislation</td>
<td>64</td>
</tr>
<tr>
<td>Unfair dismissal</td>
<td>65</td>
</tr>
<tr>
<td>Grounds for dismissal but still harsh</td>
<td>66</td>
</tr>
<tr>
<td>Relevance of policy – use of policy</td>
<td>67</td>
</tr>
<tr>
<td>Outside work hours</td>
<td>69</td>
</tr>
<tr>
<td>Public accessibility</td>
<td>71</td>
</tr>
<tr>
<td>Damages – lack of evidence</td>
<td>71</td>
</tr>
<tr>
<td>Mitigating factors</td>
<td>73</td>
</tr>
<tr>
<td>Freedom of political communication</td>
<td>74</td>
</tr>
<tr>
<td>Lessons, contracts and policies</td>
<td>80</td>
</tr>
<tr>
<td>Further reading</td>
<td>82</td>
</tr>
</tbody>
</table>

## 7 Defamation in cyberspace

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defamation principles</td>
<td>85</td>
</tr>
<tr>
<td>Defamation legislation</td>
<td>86</td>
</tr>
<tr>
<td>Defamation in cyberspace – actions and issues</td>
<td>88</td>
</tr>
<tr>
<td>Statute of limitations</td>
<td>93</td>
</tr>
<tr>
<td>The single publication rule</td>
<td>94</td>
</tr>
<tr>
<td>The single controversy principle</td>
<td>97</td>
</tr>
<tr>
<td>The single cause rule</td>
<td>97</td>
</tr>
<tr>
<td>Adventitious or opportunistic conduct</td>
<td>97</td>
</tr>
<tr>
<td>Conclusion</td>
<td>98</td>
</tr>
<tr>
<td>Further reading</td>
<td>98</td>
</tr>
</tbody>
</table>

## 8 Privacy in cyberspace

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information wants to be free</td>
<td>101</td>
</tr>
<tr>
<td>Privacy and regulation</td>
<td>102</td>
</tr>
<tr>
<td>Information privacy</td>
<td>102</td>
</tr>
<tr>
<td>Australia</td>
<td>105</td>
</tr>
<tr>
<td>Abuses</td>
<td>112</td>
</tr>
<tr>
<td>Cookies</td>
<td>113</td>
</tr>
<tr>
<td>Web bugs</td>
<td>115</td>
</tr>
<tr>
<td><em>International Covenant on Civil and Political Rights (ICCPR)</em></td>
<td>116</td>
</tr>
<tr>
<td>Data protection</td>
<td>117</td>
</tr>
<tr>
<td>Personal privacy</td>
<td>118</td>
</tr>
</tbody>
</table>
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
   UNCITRAL Model Law on Electronic Commerce and the Communications Convention 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
# Table of Contents

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
## Table of Contents

### 16 Domain names

- Part 1 – Mapping cyberspace
- ICANN
- Nexus requirements
- Part 2 – Domain name disputes
- Part 3 – Uniform Dispute Resolution Policies
- Conclusion
- Further reading

### 17 Jurisdiction in cyberspace

- Rules of private international law
- Effects test
- Australian cases
- Early US experience
- Universal rights
- Council of Europe Cybercrime Convention
- Single publication rule
- Substantial publication
- Uniform defamation legislation – choice of law
- Conclusion
- Further reading

### 18 Cybercrime

- The Commonwealth *Criminal Code* and computer crime
- Telecommunications services
- Child pornography
- Assisting suicide
- Police and security powers
- Investigative powers
- Child pornography – international
- Internet gambling
- Cyberstalking
- International approach to cybercrime
- Spam
- Identity fraud

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
  - Council of Europe Cybercrime Convention 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 *Criminal Code* 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
<table>
<thead>
<tr>
<th>Evidence of electronic records</th>
<th>379</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of electronic records</td>
<td>380</td>
</tr>
<tr>
<td>Secondary evidence rule</td>
<td>382</td>
</tr>
<tr>
<td>Evidence legislation</td>
<td>386</td>
</tr>
<tr>
<td>Legislation abolishing the ‘original document’ rule</td>
<td>388</td>
</tr>
<tr>
<td>International perspective</td>
<td>390</td>
</tr>
<tr>
<td>Hard copies of electronic records as evidence</td>
<td>394</td>
</tr>
<tr>
<td>Originals and copies – envelopes and attachments</td>
<td>395</td>
</tr>
<tr>
<td>Conclusion</td>
<td>397</td>
</tr>
<tr>
<td>Further reading</td>
<td>398</td>
</tr>
</tbody>
</table>

**PART 4 CONCLUSION**

20 Reflections and conclusions

*Appendix A* Electronic Transactions (Victoria) Act 2000

*Appendix B* Australian Privacy Principles

*Index*

399

401

403

418

436