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## ONLINE LAW: The SPA's Legal Guide to Doing Business on the Internet

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# ***ONLINE LAW:***

## ***The SPA's Legal Guide to Doing Business on the Internet***

**Thomas J. Smedinghoff, ed.**

**Addison-Wesley Developers Press 1996. ISBN: 0-201-4890-5. Pp. iii/739.**

**US\$34.95**

**Reviewed by Tom W. Bell[\*]**

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<<http://www.urich.edu/~jolt/v3i1/bell.html>>[\*\*].

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{1} Attorneys and academics have of late benefitted from a surge in the number of texts discussing the emerging law of the Internet. *Online Law: The SPA's Legal Guide To Doing Business On The Internet*, edited

by Thomas J. Smedinghoff and published by the Software Publishers Association, represents a particularly welcome contribution. It achieves its limited goals about as well as any paper-bound book could--and does so at a nicely limited price.

{2} *Online Law* offers no profound observations about the interplay of Internet, law, and society. Nor does it risk bold predictions about the future of the new digital intermedia. Rather, as indicated by its subtitle, *Online Law* has a predominantly utilitarian goal in mind: to guide non-specialist lawyers and educated lay persons through the legal issues that arise in doing business online. This, it does well.[1]

{3} An attorney recently wailed to me, "How should I know if my client can sue a web publisher for defamation? I don't even have a computer on my desk!" *Online Law* will prove useful, at least as a good starting place, for such attorneys. They will reassuringly find, as they read *Online Law*, that the fundamental doctrines continue to apply. The text reminds readers, for example, that online defamation must, as always, be "both false and injurious to the reputation of another." [2] Characteristically, however, *Online Law* does not bother to relate theoretical speculation that the Net may radically reduce plaintiffs' incentives to bring suit for defamation. [3] *Online Law* apparently regards such commentary, however interesting to academics, as irrelevant to its over-riding, practical aim.

{4} Insofar as able, *Online Law* covers the extant cases and statutes that apply specifically to the digital intermedia. Here, though, the text's fixation in hardcopy burdens it terribly. Though published in 1996, *Online Law* already suffers glaring gaps at the many points where Internet law has out paced the printing press. The book's discussion of the rapidly developing area of Internet jurisdiction, which it rightly recognizes as "The Key to Enforcing Rights", [4] misses a number of recent cases. [5] Nor does *Online Law* contain any discussion of the litigation spawned by the [Communications Decency Act of 1996](#). [6] It likewise necessarily skips, as too recent, such ground breaking cases as [Hasbro, Inc. v. Internet Entertainment Group, Ltd.](#), [7] and [ProCD, Inc. v. Zeidenberg](#). [8]

{5} As this partial catalog indicates, *Online Law's* most up-to-date portions have a relevant half-life of mere months, and already show their age. Notwithstanding the ravages of Internet time, however, the prodigious amounts of black letter law in *Online Law* should remain useful for quite awhile-- especially if Congress refrains from preempting the continually evolving common law of the Internet.

{6} Given that the Internet, like that proverbial dog, ages seven years for every human year, we could hardly expect more from a book of mere paper. This excuse only gets *Online Law's* publisher so far, however. Why does the Software Publishers Association not offer timely online updates of *Online Law*? Surely, if anyone can figure out a way to profit from web-based pocket-parts, the SPA can!

{7} At a minimum, *Online Law's* paper-based text should provide more generous references to resources available online. Attorneys and business people would no doubt very much like, where possible, to forego LEXIS and WESTLAW for cruising the WWW at a flat hourly rate. (For that matter, incidentally, *Online Law* should refer to *itself* more generously; its index fails to mention the text's coverage of the [Communications Decency Act of 1996](#). [9]) *Online Law* seems to suffer a fixation not only *in* paper, but *with* paper.

{8} *Online Law* hardly represents a perfect book for academic purposes. Yet it serves well enough that, for the moment and for lack of a better alternative, I've built my Law of Cyberspace course around it. I find it useful; my students doubly so. To the increasingly smaller degree that *Online Law* remains relevant, it will also serve practicing attorneys and business people quite capably.

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# Footnotes

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[\*\*]**NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

Tom W. Bell, Book Review, 3 RICH. J.L. & TECH. 1 (1997) (reviewing *Online Law: The SPA's Legal Guide to Doing Business on the Internet* (Thomas J. Smedinghoff ed., 1996)), at <http://www.urich.edu/~jolt/v3i1/bell.html>.

[1] It does not always do so well with constitutional and criminal issues, however. The text implies that the holding of [U.S. v. Thomas](#), 74 F.3d 701 (6th Cir. 1996), puts web publishers at risk of suit for violating *any* community's obscenity standards, not explaining that the defendants in *Thomas* had prior notice of the recipient's address and phone number. See Andrew R. Basile, Jr., et al., ONLINE LAW: THE SPA'S LEGAL GUIDE TO DOING BUSINESS ON THE INTERNET §20.2.1.1.a, at 332 (Thomas J. Smedinghoff, ed., 1996) [hereinafter, ONLINE LAW].

[2] ONLINE LAW, *supra* note 1, § 21.2.1, at 338.

[3] See Mike Godwin, *Libel Law: Let it Die*, WIRED, Mar. 1996, at 116.

[4] ONLINE LAW, *supra* note 1, § 23.1, at 365.

[5] See [Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.](#), 939 F. Supp. 1032, (S.D.N.Y. 1996); [Maritz v. CyberGold](#), 947 F. Supp. 1338 (E.D. Mo. 1996); [Bensusan Rest. Corp. v. King](#), 937 F. Supp. 295 (S.D.N.Y. 1996); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, No. 96-397, 1997 WL 37657 (W.D. Pa. Jan. 16, 1997); *McDonough v. Fallon McElligott, Inc.*, 40 U.S.P.Q. 2d (BNA) 1826 (S.D. Cal. Aug. 5, 1996).

[6] [Communications Decency Act of 1996](#), Pub. L. No. 104-104, 110 Stat. 133. See, [ACLU v. Reno](#), 929 F. Supp. 824 (E.D. Pa. 1996) (three-judge panel found portions of the Act violated the First Amendment), *probable jurisdiction noted*, 117 S.Ct. 554 (1996).

[7] 40 U.S.P.Q. 2d 1479 (W.D. Wash. Feb 9, 1996) (No. C96-130WD) (applying new federal anti-dilution statute to bar use of CANDY LAND mark).

[8] 86 F.3d 1447 (7th Cir. 1996) (enforcing shrink-wrap license to bar unauthorized copying of telephone directory listings).

[9] [Communications Decency Act of 1996](#). Compare ONLINE LAW § 20.4, at 329-30 (reviewing the Communications Decency Act ) with ONLINE LAW, at 525 (index).

