**Chapter 34: Electronic Commerce**

**Electronic Commerce** – the use of computer networks to facilitate commercial activities including the production, distribution, sale and delivery of goods and services

**Internet** – the interconnected logical networks that link computers worldwide

**Intranet** – closed systems linking specific users internal to a company or group; commonly used for data exchange

**E-Retailing** – the supply of tangible or electronic goods or services over the Internet  
- supply of tangible goods involves a conventional mode of delivery; electronic goods are downloaded directly to the customer’s computer

**Electronic Transfer of Funds** – payment made through electronic media such as telephone or Internet rather than by cash of cheque (may take form of credit card, debit card, or e-cash)

Establishing a Website:  
- negotiate a website development agreement (content, graphics, software)  
- negotiate a website-hosting agreement  
- negotiate an Internet access agreement with the ISP  
- register a domain name and protect the intellectual property associated with the website

**E-cash** – an online payment system that enables the anonymous transfer of money over the Internet

**Web-Wrap Agreements** – a website document setting out contractual terms, the acceptance of which is indicated by clicking on the appropriate icon

The law of the contract may determine such matters as:  
- the capacity of the parties to contract  
- the legality of the contract  
- the formal requirements governing the contract  
- any terms that are to be implied  
- the effects of, and remedies for, breach of contract  
- the applicability of consumer protection legislations

Ex. Certain types of contracts, such as betting on horse races, may be lawful in one jurisdiction but not in another.

The Uniform Electronic Commerce Act provides:

- information shall not be denied legal effect or enforceability solely by reason that it is in electronic form

- a requirement under law that information in writing is satisfied by information in electronic form if the information is accessible so as to be usable for future reference

- a requirement under law for the signature of a person is satisfied by an electronic signature

- unless the parties agree otherwise, an offer of the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed:  
 - a) by means of an electronic document; or  
 - b) by an action in electronic form, including touching/clicking on an appropriately designed icon on a   
 computer screen or otherwise communicating electronically in a manner that is intended to   
 express the offer, acceptance or other matter

**Torts**

The tort most closely associated with the Internet is defamation, which is usually personal rather than commercial. Posting defamatory material on a website is publication for the purposes of the law of libel and may constitute “broadcasting” for purposes of libel and slander legislation. Some courts have taken a more serious view of defamation on the Internet and have increased damage assessments due to its potential to reach a very large audience.

ISPs generally take the view that they should not be responsible for any material transmitted by them.

**Trademark** – an identifiable feature that is used by a person for the purpose of distinguishing their goods or services from those of others

**Passing-Off** – misrepresenting goods, services, or a business in such a way as to deceive the public into believing that they are the goods, services, or business of some other person

**Linking** – (or hyperlinking) an electronic connection of one website to another website  
- links may be automatic or activated by the user  
- the new website may replace the original website or open in its own frame or browser window

Unauthorized *linking* of websites may be trademark infringement, if it suggests affiliation, endorsement, or sponsorship. Infringement is most likely when the link is opened in its own frame within a single browser window so that both websites are visible at the same time.

**Cybersquatting** – the registration of a domain name containing the trademark of another person, with the intention of selling the domain name to the owner of the mark

This type of action almost certainly constitutes a trademark infringement, and may have serious consequences for the infringer, who may be ordered to relinquish the domain name and to pay court costs.

**Alternative Dispute-Resolution** – the use of private procedures such as arbitration and mediation to resolve disputes

**Technical Protection Measures (TPMs)** – access locks or use locks for electronic material: An access lock requires a password to access the work; a use lock blocks particular uses of the work such as copying

**Digital Rights Management System (DRMS)** – a system collecting data about the licensing, payment for, and authenticity of a work

Spam arguably constitutes an invasion of privacy and might be actionable under the common law of trespass. However, it would normally not be worth suing, even if the action were likely to succeed.

**Jurisdiction** – the right of a court to hear and resolve a dispute

An electronic retailer could find itself liable to be sued anywhere in the world, unless it states that its offer to sell is restricted to certain countries only.

**Level-Of-Interactivity Test** – a review of the features of a website to determine if it is active or passive; only active sites will be considered connected to the jurisdiction

Three types of situations exist:  
1) where the out-of-state defendant is carrying on substantial business within the jurisdiction  
2) where the defendant maintains an interactive site  
3) where the defendant’s site provides purely passive advertising site

Jurisdiction issues also arise in tort actions, such as defamation. Traditionally, Canadian courts have taken the view that jurisdiction may be exercised in the state or province where the tort is committed.

An alternative approach is to take the view that defamation is committed where the injury is suffered. Normally, that will be where the plaintiff lives, for that is where her reputation is harmed. Some level of foreseeability must be applied to this test.

**Non-Governmental Organization** – private groups or associations that are not part of a state, nation, or political structure – they are usually not-for-profit and focus on societal issues