

Business Online – the legal issues

TRENDS – WHERE ARE WE NOW? WHERE WILL WE BE IN FIVE YEARS' TIME?	1
- <i>Alasdair McLeod</i>	
HOW TO IDENTIFY, PROTECT AND CAPTURE VALUE IN AN ONLINE BUSINESS	13
- <i>Clive Elliott</i>	
Introduction	13
Copyright	14
Patents	16
Trade marks	18
Metatags	18
Passing off	20
Confidential information	21
Domain names	22
Linking and framing	23
Compilations and databases	24
Personality rights	26
Moral rights	27
Conclusion	28
EFFECTIVE TRANSACTIONS ONLINE AND LIABILITY FOR ONLINE STATEMENTS - <i>Michael Wigley</i>	29
1. Effective transactions online	29
<i>Electronic Transactions Act: little impact on contract validity</i>	29
<i>What are the real issues?</i>	29
<i>Onerous terms</i>	30
<i>Type of customer and/or product dictates approach</i>	31
<i>Business to business</i>	31
<i>Proving it was the customer that accepted the terms</i>	31
<i>Practical solutions</i>	32
<i>Scroll through terms?</i>	32
<i>Offer or invitation to treat?</i>	33
<i>Email contracts</i>	33
<i>Which country's law governs the contract?</i>	33
<i>Other suppliers' websites are a great help</i>	34
<i>Retention of evidence</i>	34
2. Liability for online statements	35
<i>Straightforward solution</i>	35
<i>Disclaimer</i>	35
<i>Defamation</i>	36
<i>Linked sites</i>	36
DEALING WITH CONSUMERS - Fraser Goldsmith and Sarah-Jane Weir	37

Introduction	37
Setting up to do business online – the practical matters to consider	37
<i>New Zealand model code for consumer protection in electronic commerce</i>	38
Identifying the business	39
Privacy policy	39
Terms of trade	40
Customer complaints and dispute resolution	41
Applicable law	41
Security	42
Basic intellectual property checks	42
Site management	42
Particular site requirements	43
The main legislation to keep in mind	43
Consumer Guarantees Act 1993 ("the CGA")	44
<i>The CGA before the proposed changes in the draft Consumer Protection (Definitions of Goods and Services) Bill</i>	44
<i>The effect on the CGA of the proposed changes in the Consumer Protection (Definitions of Goods and Services) Bill</i>	45
Fair Trading Act 1986 ("the FTA")	45
Commerce Act 1986	46
Sale of Goods Act 1908 ("the SOGA")	47
Sale of Goods (United Nations Convention) Act 1994	47
Auctioneers Act 1928	48
Credit Contracts Act 1981	49
Credit (Repossession) Act 1997	49
Hire Purchase Act 1971	50
Securities Act 1978	50
Investment Advisers (Disclosure) Act 1996	50
THE PRIVACY/DATA PROTECTION ASPECTS OF DOING BUSINESS ONLINE	51
- Dr Paul Roth	
Introduction	51
Compliance with the Privacy Act	52
<i>Principle 1: "Purpose of collection of personal information"</i>	53
<i>Principle 2: "Source of personal information"</i>	53
<i>Principle 3: "Collection of information from subject"</i>	54
<i>Principle 4: "Manner of collection of personal information"</i>	56
<i>Principle 5: "Storage and security of personal information"</i>	56
<i>Principle 6: "Access to personal information"</i>	57
<i>Principle 7: "Correction of personal information"</i>	57
<i>Principle 8: "Accuracy, etc, of personal information to be checked before use"</i>	58
<i>Principle 9: "Agency not to keep personal information for longer than necessary"</i>	58
<i>Principle 10: "Limits on use of personal information"</i>	58

<i>Principle 11: "Limits on disclosure of personal information"</i>	59
<i>Principle 12: "Unique identifiers"</i>	59
Self-regulatory schemes	60
Compliance with European standards	61
<i>The proposed amendments to the Privacy Act</i>	62
<i>European jurisdiction over the sending of cookies from outside the European union</i>	63
Formulating a privacy policy statement	65
Conclusion	67
TAX ASPECTS OF ELECTRONIC COMMERCE FOR NZ BUSINESS - Casey Plunket	69
Introduction	69
1. Electronic commerce	70
2. Tax framework	71
<i>Income tax</i>	71
<i>GST</i>	72
3. Royal Jelly: NZ income tax	74
<i>Deductibility of website costs</i>	74
<i>Record keeping</i>	75
4. Royal Jelly: foreign income taxes	77
<i>Possibility of foreign taxes on income from foreign sales</i>	77
<i>Is a website or a server a permanent establishment?</i>	77
<i>Non-treaty country income tax</i>	78
<i>Gross-up clauses</i>	78
<i>Credit for foreign taxes</i>	79
5. Royal Jelly: NZ GST	79
<i>Is GST payable on the transaction?</i>	79
<i>What is the effect of zero rating on the price?</i>	81
<i>GST record keeping</i>	83
6. Royal Jelly: foreign GST and other transaction taxes	83
7. Sources	83
<i>New Zealand</i>	84
<i>Australia</i>	84
<i>USA</i>	84
<i>OECD</i>	85
<i>EU material</i>	85
Appendix: existing tax treaties	87
Disclaimer	88
AN OVERVIEW OF THE LEGISLATION CURRENTLY IN THE PIPELINE - Chris Linton and Graeme Crombie	89
Introduction	89
Part A: The Electronic Transactions Bill ("the ET Bill")	90
Structure of the the ET Bill	92

<i>Part 1 – Preliminary matters</i>	92
<i>Part 2 – Improving certainty in relation to electronic information and electronic communications</i>	92
<i>Part 3 – Application of legal requirements to electronic transactions</i>	92
Validity of electronic communications	93
Default rules about dispatch and receipt	93
<i>Clause 10 – time of dispatch</i>	93
<i>Clause 11 – time of receipt</i>	94
<i>Clause 12 – place of dispatch</i>	95
<i>Clause 13 – place of receipt</i>	95
<i>Attribution</i>	96
<i>Originator and addressee</i>	96
Clause 11	96
<i>What is a "designated information system"?</i>	96
<i>When will an electronic communication "come to the attention" of the addressee?</i>	97
<i>Is the solution to require acknowledgment of receipt?</i>	97
Part 3 – application of legal requirements to electronic transactions	98
Writing	100
<i>When is information readily accessible so as to be useable for subsequent reference?</i>	101
Signatures	102
<i>A legal requirement for a signature</i>	103
Retention of documents	104
<i>Electronic retention of information originally in non-electronic form</i>	104
<i>Non-electronic retention of information originally in electronic form</i>	105
<i>Electronic communications</i>	105
<i>Integrity of information</i>	105
<i>What is meant by readily accessible, so as to be useable for subsequent reference?</i>	105
Provision and production of, and access to, information	106
Miscellaneous matters	107
<i>Interpretation Act 1999</i>	107
Other issues	108
<i>Liability of internet service providers (ISPs)</i>	108
<i>Securities Act 1978</i>	109
Part B: Crimes Amendment Bill (No 6) ("the CCCA Bill")	109
Crimes against personal privacy	111
Crimes against rights of property	112
The new offences	113
<i>Accessing computer system for dishonest purpose</i>	114
<i>Damaging or Interfering with computer system</i>	114
<i>Making, selling, or distributing or possessing software for committing crime</i>	115
<i>Accessing a computer system without authorisation (hacking)</i>	115

Obtaining evidence by interception devices	116
Part C: Evidence code	116
<i>Background</i>	116
The Code	117
Summary	118
DEVELOPING, HOSTING AND MAINTAINING A WEBSITE - Anne Hall	119
Introduction	119
Choosing suppliers	119
<i>Purpose</i>	119
<i>Scope</i>	120
<i>Internal skills and resources</i>	120
<i>Future plans</i>	120
<i>Reputation and experience</i>	121
<i>Budget and timing</i>	121
Contractual requirements	122
<i>Requirements and specification</i>	122
<i>Performance criteria</i>	123
<i>Incorporation of legal elements</i>	123
<i>Acceptance testing</i>	124
<i>Intellectual property</i>	124
<i>Target audience's technology</i>	125
<i>Site optimisation</i>	125
<i>Website hosting contracts</i>	125
<i>Website maintenance contracts</i>	126
Managing performance	126
CROSS-BORDER ISSUES - Ross Johnston	127
Introduction	127
Where can online businesses sue and be sued?	128
<i>Bringing actions in New Zealand against foreign defendants</i>	129
<i>Defending actions in foreign jurisdictions</i>	130
Which law will be applied to resolve a dispute?	134
<i>Express choice of proper law</i>	135
No express choice of proper law	136
Where will a judgment or order be enforced?	137
Practical steps to manage cross-border legal risks	138