

Cyber Law in the United Kingdom: Review and Comment

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Abstract - The paper makes a review and a comment of *Cyber Law in the United Kingdom*. In the review, the paper analyses its structure and the relevant legislations. The general introduction conveys the telecommunications infrastructure, and the body mainly introduces the legislations of telecom regulations as to the deregulation of telecom industry, the opening and competition of telecommunications and BT privatization and commercialization. The comment points out that UK Cyber Law is of originality, integrity and internationality. The legislation is of enlightenment to China in aspects of personal data protection, the intellectual property, privacy protection, and cyber security. UK Cyber Law is a useful guide to the lawyer, and a great help to undergraduates, graduates and related researchers.

Index Terms – Cyber Law, review, comment

1. Introduction to the Author of *Cyber Law in the United Kingdom*

Cyber Law in the United Kingdom (CLUK in short) was originally published in the *International Encyclopaedia of Laws/Cyber Law*, Professor Roger Blanpain as chief editor, the authority of international labor law. Doctor Ian Lloyd, the writer of CLUK, professor of information technology law, is professor of Information Technology Law in since 1996 interested in information technology and telecommunication law. He has published *Telecommunications Law* (Sweet and Maxwell, 2013), *Information Technology Law* (Oxford University Press, 2011, 6th edition), *Legal Aspects of the Information Society* (2000), *A Guide to the Data Protection Act* (1998), *Telecommunications Law* (Oxford University Press, 2003) (a co-author with Professor David Mellor), *Law on the Electronic Frontier* (1995) (co-author with Professor M Simpson). Ian is also editor of the international journals *Law and Information Technology* and *Computer Law and Safety Review*.

2. The CLUK Structure

Cyber Law in the United Kingdom of 226 pages, published in 2010 by Wolters Kluwer Law & Business Press, is composed of two parts: general introduction and body. The general introduction has five parts: the general background of the country, telecommunication infrastructure, the information and communications technologies market, E-commerce: facts and figures, and E-government initiatives. In this part, Ian makes an introduction with sufficient data to the market profile of United Kingdom information and communications technologies (ICT in short), to the regulatory agency (OFCOM) and to cybernauts, focusing on telecommunications infrastructure.

The CLUK body consists of seven parts, each covering

separately ICT marketing management, protection of intellectual property in the ICT Sector, ICT contacts, electronic transactions, non-contractual liability, privacy protection and computer-related crime. The body mainly introduces the legislations of telecom regulations as to the deregulation of telecom industry, the opening and competition of telecommunications and BT privatization and commercialization.

3. The Relevant Legislations in CLUK

A. *The Legislation of the Deregulation of Telecom Industry*

To protect consumers' interests and market competition, Telecommunications Act 1984 stipulates that Telecom administration should perform a range of duties, including top and specific duties such as promotion general responsibility and community needs. The chief functions of Telecom administration are to improve the interests of citizens and consumers in related market, and to promote market competition. Hence, Telecom administration has specified a serious of tasks, mainly related to the improvement of citizens' rights and interests, for the promotion of competition. Telecommunication administration, while performing its duties, should respect the rights and interests of consumers as to their choices of goods, price, service quality and etc.

The 1984 act has set up an independent telecommunication regulation institution, OFTEL with the function of regulating domestic telecom operation together with the minister of trade and industry. 1981 started the separation of the British post and telecommunications, signalling the start of BT commercialization. "1984 Act enacts the privatization policy and the BT privatization, selling its 51% stake." (BT, 2001) It is regarded as an important historic milestone on the history of British telecommunications. In 1991 British Telecom (BT in short) industry, fully opened, is equipped with single or multiple telecoms regulator. In 2003 BT set up the post of telecommunications ombudsman for the justice of consumers, in charge of consumers' complaints of fixed and mobile networks.

B. *The Legislation of Telecom Competition*

In the nineties, the British telecom policy of in white paper ended the oligopolistic monopoly, and started the overall opening of BT markets. To better the rights and interests of consumers and to improve market competition, United Kingdom enacted Competition Act in 1998, in effect on March 1, 2000. The act includes 71 items, dealing with four kinds of legislations. The first chapter of Competition Act is to prohibit competition items in competition agreement, and

the second chapter is to emphasize the banning of protocols and decisions that have bad affects to UK trades, the writing off decisions that impede, distort and limit the domestic competition of UK among businesses or enterprise confederation. The prohibited provisions formulate that these protocols and decisions are in valid.

The second chapter of Competition Act regulates the abuse of authority. Article 19 regulates that 1) if any one or more industries led to the abuse of dominant market position resulted in bad effect of UK trade, it or they should be cancelled; 2) such behavior resulted to abuse should be cancelled as a) unfair sell or buy directly and indirectly, b) limiting technology to the anticipation of consumers, and c) putting the trading party at a competitive disadvantage. Telecommunication administration in 2003 set up the general terms and conditions, including 21 items. These clauses specify the rights and obligations of suppliers, which are regarded as the reference framework of new decision and disputes.

C. The Legislation of ICT Intellectual Property

British copyright system is in constant development in the past few centuries, whose scope is far beyond the kinds of books. "1956 Copyright Law enlarged the scope of protection of intellectual property rights." (BT, 2000) UK enacted Patent Law in 1977 so as to make the European patent approved throughout UK. The Patent Act specifies that the patent right can be empowered to the product inventor or process innovator on the condition that the product is newly invented, innovative, and applicable to industrial development. The 1988 Copyright has provided a legal foundation for copyright design and patent law including the written or other forms of recording work such as computer derivative works. And the 1992 legislation has enlarged that of 1988. The literature amendment includes database, computer program previously prepared by programming information. On January 1, 1998, the new intellectual property law was established in the UK.

D. The Legislation of Electronic Transactions

The UK consumer contract legislation is also complete though earlier. The Unfair Contract Terms Act 1977 contains provisions for commercial contracts for the supply of software. It provides further that the resources which he could expect to be available to him for the purpose of meeting the reliability should it arises; and how far it was open to him to cover himself by insurance.

The Supply of Goods and Services Act 1982 implies requirements that the supplier should exercise reasonable skill and care and that any goods ultimately supplied will comply with identical requirements relating to title, ultimately comply with identical requirements under the Sale of Goods Act 1979. The Consumer Protection Act 1987 is involved in product concepts, the definition of product defects, legal liability and remedy, litigation and defense. Protection Act specifies that defects are due to its security under the general consumer expectations and that manufacturers are responsible only for

the loss of defective products to its consumers. "Protection Act is to introduce the aspects of consumer protection from personal injury, property damage led by the responsibility systems, and the implementation of the law to maintain the interests of consumers which is regarded as the legal guarantee of relief by the consumers." (Yang Songcai, 2003)

E. The Legislation of Privacy Protection

Data Protection Act was enacted in 1984 for protecting information and data. "The new edition of Data Protection Act, published in 1998, put forward eight personal data protection principles" such as the fairly and lawfully processed personal data, personal data obtaining for specific purposes, adequate but not excessive data, accurate data, specific purpose confined data, processed data under this Act. (Ofel, 2000)

4. Comments on CLUK

CLUK deals with every aspect in cyber legislation, chiefly focusing on the telecom deregulation, on the telecom competition, on electronic transaction, and on privacy protection. Besides this widespread legislation, CLUK is characterized as originality, integrity and internationality.

CLUK has the feature of originality marked by the UK enacting of the first personal data protection law in 1984. It is the first time that the concept, personal data, is initiated. Personal data is concerned with information of a living individual as to others' evaluation and the intention of processor of personal data. This, the second originality, marks the beginning of the UK personal data protection. Thirdly, it is the first systematic written laws and regulations, which can be regarded as a suitable reference to such related issues in China as the intellectual property, privacy protection, and cyber security.

CLUK has the feature of integrity in UK telecom industry reforms. UK telecom industry implements a series of reform measures, from the separation of postal telecommunications to market opening, from regulation to deregulation and to the users' protection of benefits. The telecom industry has established a series of perfect systems, vigorously promoting the telecom privatization and commercialization, and enhancing the transformation of the telecommunications industry to the competition structure. And UK is in cooperation with various communications companies as Vodafone, T-Mobile, BT mobile, 3UK, O2/Kingston, and Telewest, to share the business of Mobile companies. This strategic reform measures and developing mode of cooperation is of great enlightenment to China's reform and development in telecommunication industry.

Most important, CLUK has the feature of internationality. UK legislation is founded on EU law and kept in constant line. The UK personal data protection act has adopted the EU protection convention of personal information automation processing; and the UK protection of the consumers' rights and interests has followed the Product Liability Directives of European Union. The EU law base of UK cyber law "is, to a great extent, on behalf of EU consumer

protection and product liability policy. It is worth our learning and attention of European merchants.” (Yang Songcai, 2003)

Furthermore, the book is quite distinctive with key sections in chapter 1 in general introduction and part I and part II in the body. They have each 58 and 48 pages, occupying the two thirds of the whole book, with “regulatory framework of the telecommunications sector” as the key chapter. The least important chapter is in Part IV within 10 pages, and the rest is around 20 pages on average. CLUK has a nice combination of theories with illustrations, with *Donoghue v. Stevenson* of 1932 as a case of non-contractual liability. In general, CLUK is a useful guide to the lawyer, and a great help to undergraduates, graduates and related researchers.

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