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PREFACE

The idea for this book arose several years ago when I was teaching my cybercrime class for the first time. In compiling materials, I was struck by two things: first, that the challenges of cybercrime were being faced simultaneously by all developed and, increasingly, developing countries; second, that much of the academic writing in the area was criminological in nature, with relatively little doctrinal analysis. It was in this context that I first proposed to write this book: a comparative doctrinal analysis of cybercrime laws. While some time has passed between idea and fruition, in this case delay has ultimately been beneficial. The last few years in particular have seen increased legislative and judicial activity in the area of cybercrime, creating a considerable body of law in this relatively new field. As this book amply demonstrates, the criminal law has well and truly arrived in cyberspace.

This book is intended for anyone who wishes to gain a deeper understanding of the legal principles which are applied to ‘cybercrimes’, whether they be academics, legal practitioners, law enforcement officers or students. Aside from jurisdictional issues, it does not address the law of criminal investigation, procedure or evidence. The unique feature of this book is that the various offences are analysed across four major common-law jurisdictions: Australia, Canada, the United Kingdom and the United States. These jurisdictions were chosen for a number of reasons. First, they share a common law heritage. Second, they are each advanced developed countries that have dealt extensively with the challenges of cybercrime. Third, Canada, the United Kingdom and the United States are all signatories to the Council of Europe Convention on Cybercrime, the most significant international instrument in this area. Together these jurisdictions provide a wealth of information on the nature of cybercrime and the ways in which it may be addressed. This collective experience is of interest not only to readers from these respective countries, but from any country seeking to understand the challenges of cybercrime.

Each chapter begins with a background to the offence type, followed by an overview of the legislative environment in each jurisdiction. The key principles which are found within each offence are then analysed drawing upon the law of each jurisdiction. In some cases, there is considerable overlap, while in others quite distinct approaches are adopted. Where possible, guidance is provided in the text pointing out these similarities and differences. In this way, it is hoped that the book can be read by a reader focusing on their own jurisdiction, while also facilitating comparisons with other jurisdictions. I have endeavoured to state the law to at least March 2009, although some material was being added right up to the submission of the manuscript. Any errors are of course my own.

This book has been some time in the making and there are many people to thank: Inspector Peter Wilkins, Victoria Police, for his early support in my endeavours in the field; Jill Henry, who first put me in touch with Cambridge University Press; Finola O'Sullivan, for commissioning the book and her ongoing support, and the team at Cambridge for their hard work throughout the process; the Monash Law Faculty for a small grant which helped with research assistance, but more importantly for the friendship and support of my colleagues; Jennie Avery for her early research assistance; and Dr Russell Smith, Principal Criminologist, Australian Institute of Criminology, and Professor Susan Brenner, NCR Distinguished Professor of Law, University of Dayton, USA, for their encouragement and comments on draft chapters. A particular debt of gratitude is owed to my research assistant, Natalia Antolak-Saper, who has demonstrated skill, patience and attention to detail above and beyond the call of duty. Last, but not least, a big thank you to my family and friends who are a constant source of love, support and encouragement.

*Jonathan Clough
Melbourne, June 2009*

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ABBREVIATIONS

AHTCC	Australian High Tech Crime Centre
AIC	Australian Institute of Criminology
AOL	America Online
APIG	All Party Parliamentary Internet Group
ATM	Automatic Teller Machine
BBS	Bulletin Board System
CFAA	Computer Fraud and Abuse Act
CPU	Central Processing Unit
DDoS	Distributed Denial of Service (attack)
DNS	Domain Name Server
DoS	Denial of Service (attack)
ECPA	Electronic Communications Privacy Act
EFTPOS	Electronic Fund Transfer (at) Point of Sale (Aus/NZ)
GPS	Global Positioning System
HTTP	Hypertext Transfer Protocol
ICANN	Internet Corporation For Assigned Names And Numbers
ICMP	Internet Control Message Protocol
IP	Internet Protocol
ISP	Internet Service Provider
LAN	Local Area Network
MCCOC	Model Criminal Code Officers Committee
MDA	Mail Delivery Agent
MMS	Multimedia Messaging Service
MUA	Mail User Agent
p2p	peer-to-peer
PDA	Personal Digital Assistant
PIN	Personal Identification Number
RIPA	Regulation of Investigatory Powers Act 2000 (UK)
SCA	Stored Communications Act
SMS	Short Messaging Service
SMTP	Simple Mail Transfer Protocol
URL	Uniform Resource Locator
USB	Universal Serial Bus
VDU	Video Display Unit
VOIP	Voice over Internet Protocol

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