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PRINCIPLES OF CYBERCRIME

Digital technology has transformed the way in which we socialise and do business. Proving the maxim that crime follows opportunity, virtually every advance has been accompanied by a corresponding niche to be exploited for criminal purposes; so-called 'cybercrimes'. Whether it be fraud, child pornography, stalking, criminal copyright infringement or attacks on computers themselves, criminals will find ways to exploit new technology. The challenge for all countries is to ensure their criminal laws keep pace. The challenge is a global one, and much can be learned from the experience of other jurisdictions. Focusing on Australia, Canada, the UK and the USA, this book provides a comprehensive analysis of the legal principles that apply to the prosecution of cybercrimes.

This new edition has been fully revised to take into account changes in online offending, as well as new case law and legislation in this rapidly developing area of the law.

JONATHAN CLOUGH is a professor in the Faculty of Law at Monash University, Australia. He teaches and researches in the areas of criminal law and evidence, with a particular focus on cybercrime. In addition to teaching cybercrime in the Monash LLM programme, he has written numerous articles on the topic. He has also provided advice to government on cybercrime-related issues, and was a member of the Commonwealth Working Group of Experts on Cybercrime.

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CONTENTS

Preface viii
Acknowledgements x
Table of legislation xi
Table of cases xxxvi
List of abbreviations lv

PART I Introduction 1

1 Cybercrime 3

1. The evolution of cybercrime 3
2. The challenges of cybercrime 5
3. Defining cybercrime 9
4. Cyberterrorism 12
5. The scale of the problem 15
6. Online/offline consistency 17
7. Virtual crimes? 18
8. A global problem: the Convention on Cybercrime 23

PART II Computer as target 29

2 Computer as target 31

1. Introduction 31
2. The prevalence of cybercrime 45
3. The legislative environment 47

3 Access offences 56

1. Introduction 56
2. The meaning of ‘computer’ 59
3. ‘Access’ 68
4. ‘Unauthorised’ 80
5. Fault element 104
6. Additional elements 107

4	Modification or impairment of data	112
1.	Introduction	112
2.	Legislative provisions	113
3.	Conduct causing modification or impairment	117
4.	Modification or impairment	123
5	Misuse of devices	133
1.	Introduction	133
2.	Australia	136
3.	Canada	138
4.	The United Kingdom	141
5.	The United States	144
6	Interception of data	149
1.	The changing nature of telecommunications	149
2.	The legislative framework	150
3.	The meaning of ‘telecommunication’	158
4.	What is a communication? (content vs. metadata)	167
5.	‘Interception’ (live vs. stored communications)	183
	PART III Fraud and related offences	207
7	Fraud	209
1.	Fraud online	209
2.	The scale of the problem	228
3.	Legal responses	232
4.	Identity theft	238
8	Criminal copyright infringement	255
1.	Copyright infringement is (not) theft	255
2.	Legislative provisions	261
9	‘Spam’	272
1.	Electronic junk mail	272
2.	Regulating spam	275
3.	Anti-spam legislation	279
	PART IV Content-related offences	287
10	Child pornography	289
1.	Child abuse online	289
2.	The criminalisation of child pornography	294
3.	Defining child pornography	297
4.	Producing child pornography	325

CONTENTS

vii

5.	Offering or making available	330
6.	Distributing or transmitting	335
7.	Procuring child pornography	338
8.	Possession of child pornography	344
9.	Defences	368
PART V Offences against the person		375
11	‘Grooming’	377
1.	Sexual predators online	377
2.	Legislative responses	385
3.	Transmitting indecent or obscene material to minors	389
4.	Grooming	394
5.	Inducing or procuring	402
6.	Travelling with intent	413
12	Harassment	417
1.	Harassment in cyberspace	417
2.	The scale of the problem	420
3.	Legislative responses	423
4.	Forms of harassment	433
13	Voyeurism	454
1.	Digital voyeurs	454
2.	Criminalising voyeurism	455
3.	Legislative responses	459
PART VI Jurisdiction		473
14	Jurisdiction	475
1.	Crime in cyberspace	475
2.	Prescriptive jurisdiction	475
3.	Adjudicative jurisdiction	481
4.	Enforcement jurisdiction	486
<i>Bibliography</i>		489
<i>Index</i>		513

PREFACE

It is a great privilege to be writing a preface to this second edition of *Principles of Cybercrime*. As one would expect in such a rapidly developing area, much has changed since 2010. Terms such as ‘cyberbullying’, ‘sexting’ and ‘trolling’ have become established in the lexicon. Technologies such as peer-to-peer networks and botnets continue to evolve and facilitate a broad range of offending, from criminal copyright infringement to child exploitation. New offences have been enacted and existing offences amended, while courts continue to grapple with the interface between legal doctrine and technological change. Of particular significance, Australia and the United Kingdom joined the United States in ratifying/acceding to the Council of Europe Convention on Cybercrime, the most significant international instrument in this area.

Although there have been significant changes, in many respects this has been evolution rather than revolution; part of the normal ongoing development of the criminal law. In revising the material for this edition I have been struck by how resilient the law has proved to be in many areas of cybercrime, with both legislatures and courts able to confront novel and challenging situations. In addition, there is clearly an increased awareness by governments of the various threats posed by cybercrimes, and the importance of a multi-faceted approach. If the first edition hoped to demonstrate that the criminal law had well and truly arrived in cyberspace, this second edition illustrates that it has achieved a level of maturity.

As with the first edition, 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, as noted above, Australia, the United Kingdom and the United States are all parties to the Council of Europe Convention on Cybercrime, while Canada is a signatory. 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 June 2014, although some material was being added right up to the submission of the manuscript. Any errors are of course my own.

This second edition is later than was anticipated, and I am grateful to Cambridge University Press for their patience and persistence. In particular, I would like to thank Finola O'Sullivan, for commissioning the first edition and for supporting the publication of a second. I am also grateful to the team at Cambridge for their hard work throughout the process, in particular Marta Walkowiak, Robert Judkins and Richard Woodham for their guidance in bringing this book to fruition. I have been fortunate to have the assistance of a succession of very able research assistants: Irene Argeres, Melissa Kennedy and Joshua Teng. Particular thanks are due to Helena Kanton for her research assistance and also her hard work in helping to prepare the final manuscript. I would also like to thank my colleagues at the Monash Law Faculty for providing a collegial research environment. On a personal level, a big thank you to my family and friends who are a constant source of love, support and encouragement. Most importantly, this book is dedicated to Natalia; a small recognition of all the love and support she has given me.

Jonathan Clough
Melbourne, March 2015

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TABLE OF LEGISLATION

Australia

Commonwealth

Acts Interpretation Act 1901
s. 2B 137, 243
s. 2C(1) 243
Classification (Publications, Films and Computer Games) Act 1995 297
Constitution
s. 51(v) 153, 158, 481
Copyright Act 1968
Part V, Division 5 262
Part V, Division 5, Subdivision C 263, 271
Part V, Division 5, Subdivision E 262
Part V, Division 5, Subdivision F 262
s. 9A 270
s. 10(1) 266, 268
s. 33(2) 255
s. 36(1) 269
s. 36(1A) 269, 270
s. 101(1) 269
s. 101(1A) 269, 270
s. 112D 270
s. 132AA 266
s. 132AC(1) 264
s. 132AI 266
s. 132AK 271
Criminal Code Act 1995
Part 7.3 233
Part 9.5 239
Part 10.6, Division 474 51
Part 10.7 50, 51
Part 10.7, Division 477 51, 136, 137

xii	TABLE OF LEGISLATION
Part 10.7, Division 478	51, 137
Part 10.8	241
s. 4.1(1)(c)	363
s. 5.4(1)	363
s. 5.6	270
s. 5.6(1)	363
s. 5.6(2)	363
s. 11.5(3)(c)(ii)	386
s. 13.4	390, 395
s. 13.5	390, 395
s. 15.1	477
s. 15.1(1)(d)	478
s. 16.2(2)	478
s. 16.2(3)	478
s. 100.1	14
s. 100.1(2)(f)	15
s. 101.4	14, 297
s. 134.1	235
s. 143.1(1)	237–238
s. 370.1	243, 248
s. 372.1	246, 252
s. 372.1(1)	248
s. 372.1(3)(b)	249
s. 372.1(4)	249
s. 372.2	246
s. 372.2(3)	246
s. 372.2(4)	246
s. 372.3	252
s. 372.3(1)	252
s. 372.5	246
s. 372.6	246, 249, 252
s. 473.1	51, 52, 298, 299, 304, 308, 313, 315, 340
s. 473.4	452
s. 474.12(1)(b)	51
s. 474.14	51
s. 474.14(3)	51
s. 474.14(5)	51
s. 474.14(6)	51
s. 474.15	434
s. 474.16	434
s. 474.17	389, 425, 434, 452
s. 474.17(1)	425, 438, 452
s. 474.19	296, 368

TABLE OF LEGISLATION

xiii

s. 474.19(1)(a)(i) 339, 340
s. 474.19(1)(a)(ii) 339, 340
s. 474.19(1)(a)(iii) 330, 331, 333, 336, 337
s. 474.19(1)(a)(iv) 344
s. 474.19(2) 339
s. 474.19(2)(b) 340
s. 474.19(2A) 339, 340
s. 474.20 296, 325
s. 474.21(1) 368
s. 474.21(2) 368, 371
s. 474.22 296, 298
s. 474.22(1)(a) 330, 331, 333, 336, 337, 339, 340, 344
s. 474.22(2) 339
s. 474.22(2)(b) 340
s. 474.22(2A) 339, 340
s. 474.23 296, 298, 325, 344
s. 474.24 368
s. 474.24A 296
s. 474.25A(1) 403
s. 474.25A(2) 403
s. 474.25A(4) 403
s. 474.25B 403
s. 474.26 404
s. 474.27(1) 394, 395
s. 474.27(2) 395
s. 474.27(3) 395
s. 474.27A 389, 390
s. 474.28(1) 390, 395
s. 474.28(2) 395
s. 474.28(3) 390, 395
s. 474.28(4) 395
s. 474.28(8) 395
s. 474.28(9) 390, 395
s. 474.28(10) 395
s. 474.29(4) 395
s. 474.29(5) 390, 395
s. 474.29(6) 390, 395
s. 474.29A 297
s. 474.29B 297
s. 476.1(1) 69, 124, 125
s. 476.1(2) 70, 126
s. 476.2(1) 80
s. 476.2(2) 95

xiv	TABLE OF LEGISLATION
s. 476.2(3)	70
s. 476.2(4)	83
s. 476.3	477
s. 477.1(1)(a)(i)	56, 105
s. 477.1(1)(a)(ii)	113, 125
s. 477.1(1)(a)(iii)	114
s. 477.1(1)(c)	105
s. 477.1(1)(d)	105
s. 477.1(2)	117
s. 477.1(6)	56, 113
s. 477.1(7)	56
s. 477.1(8)	56
s. 477.1(9)	56
s. 477.2	114
s. 477.2(1)	114, 124
s. 477.2(3)	70, 124
s. 477.2(4)	114
s. 477.3	114
s. 477.3(1)	114, 125
s. 477.3(3)	114
s. 478.1	95, 105
s. 478.1(1)	57, 108, 114
s. 478.1(3)	108
s. 478.2	114, 125
s. 478.3	136
s. 478.3(1)	136
s. 478.3(2)	136
s. 478.3(3)	136
s. 478.3(4)	137
s. 478.4	136, 137
s. 478.4(1)	137
s. 478.4(2)	136
s. 478.4(3)	136
s. 478.4(4)	137
Dictionary	52, 70, 308, 395, 403
Cybercrime Legislation Amendment Act 2012	52
Extradition Act 1988	486
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	239
Radiocommunications Act 1992	
s. 6(1)	159
Spam Act 2003	
Part 3	284

TABLE OF LEGISLATION

XV

Part 4 280
Part 5 280
Part 6 280
Schedule 1 279
Schedule 2 283
Schedule 3 280
s. 5 281
s. 6 282
s. 7 279
s. 16 279
s. 16(2) 283
s. 16(6) 284
s. 17(1) 284
s. 18(1) 284
s. 27 280
Surveillance Devices Act 2004
Part 4 456
s. 6 135, 160
Telecommunications Act 1997
s. 7 52, 158, 159
Telecommunications (Interception and Access) Act 1979
Chapter 3 186
Chapter 4 171
s. 5 170
s. 5(1) 158, 159, 184, 185
s. 5G 186
s. 5H(1) 185
s. 5H(2) 185
s. 6(1) 170, 184
s. 7 153
s. 7(1) 152
s. 105(2) 152
s. 108 153, 187
s. 108(1) 153, 186
s. 108(1A) 186

Australian Capital Territory

Crimes Act 1900
s. 35 425
s. 64 296
s. 65 296, 344, 402
s. 66 389, 404
Listening Devices Act 1992 160

New South Wales

Crimes Act 1900
 Part 3, Division 15A 296
 Part 3, Division 15B 46
 Part 4AB 239
 Part 6 51
 s. 61N 402
 s. 66EB 404
 s. 66EB(2A) 413
 s. 66EB(3) 394
 s. 91G 402
 s. 91H(3) 344
 s. 308B(2) 95
 s. 308H 95
 s. 310 118
 s. 578C 446
 Crimes (Domestic and Personal Violence) Act 2007
 s. 13 425
 Surveillance Devices Act 2007
 s. 10 160

Northern Territory

Criminal Code
 Part V, Division 2 296
 Part VII, Division 10 51
 s. 125A(1) 298
 s. 125B(1) 344
 s. 125E 402
 s. 131 404
 s. 132(2)(e) 390
 s. 189 425
 s. 222 50, 107
 Surveillance Devices Act 2007 160

Queensland

Criminal Code Act 1899
 Ch. 5 468
 Ch. 33A 425
 s. 207A 298, 461, 468
 s. 218A 404
 s. 218A(2)(b) 413
 s. 218B(1)(a) 394

TABLE OF LEGISLATION xvii

- s. 218B(1)(b) 390
- s. 227A 460, 467
- s. 227A(1) 461
- s. 227A(1)(b)(i) 462
- s. 227A(1)(b)(ii) 461
- s. 227A(2) 464
- s. 227A(2)(b) 464
- s. 227B 460, 470
- s. 227B(2) 470
- s. 227C 331, 471
- ss. 228A–228H 296
- s. 228D 344
- s. 408D 57, 108, 239
- s. 408E 51
- Police Powers and Responsibilities Act 2000 160

South Australia

- Criminal Law Consolidation Act 1935
- Part 3, Division 11A 296
- Part 4A 51
- Part 5A 239
- s. 19AA 425
- s. 63A(1) 344
- s. 63B 394, 402, 405
- Listening and Surveillance Devices Act 1972 160
- Summary Offences Act 1953
- s. 26B 445
- s. 26C 447
- s. 26D 460
- s. 44 51
- s. 44A 51

Tasmania

- Classification (Publications, Films, and Computer Games) Enforcement Act 1995
- Part 8 298
- s. 74(a) 364
- s. 74(b) 364
- s. 74A 344
- Criminal Code Act 1924
- Ch. XXVIII 51
- s. 125D 390, 404
- s. 130 296, 402

xviii	TABLE OF LEGISLATION
s. 130E(2)	373
s. 192	425
s. 257	239
Listening Devices Act 1991	160
Police Offences Act 1935	
s. 13A	460
s. 13C	470

Victoria

Crimes Act 1958	
Part 1, Division 2AA	239
Part 1, Division 3(6)	51
s. 21A	425, 479
s. 21A(1)	425
s. 21A(2)	430
s. 21A(2)(ba)	442
s. 21A(2)(bb)	447
s. 21A(2)(bc)	450
s. 21A(2)(f)	450
s. 21A(2)(g)	430
s. 21A(3)(b)	433
s. 21A(3)	432
s. 21A(4)	428
s. 21A(7)	480
s. 47	403
s. 49B(2)	394
s. 58	404
s. 67A	296
s. 69	402
s. 70(1)	344
s. 76	92
Racial and Religious Tolerance Act 2001	
s. 24	297
s. 25	297
Summary Offences Act 1966	
Part I, Division 4A	460, 464
s. 41DA	302, 447
s. 41DB	447
Surveillance Devices Act 1999	160
s. 3	135, 456
s. 7(1)	451, 456
s. 11	470

TABLE OF LEGISLATION

xix

Western Australia

Classification (Publications, Films. and Computer Games) Enforcement Act 1996
 s. 101(b) 342
 s. 101(e) 344
 Criminal Code Act Compilation Act 1913
 s. 204A(2) 394
 s. 204B 390, 404
 s. 217 402
 s. 219(1)(a) 332
 s. 220 344
 s. 338E 425
 s. 440A 51, 108
 Surveillance Devices Act 1998 160

Canada

An Act to Promote the Efficiency and Adaptability of the Canadian Economy by
 Regulating Certain Activities that Discourage Reliance on Electronic Means of
 Carrying out Commercial Activities, and to Amend the Canadian Radio-television
 and Telecommunications Commission Act, the Competition Act, the Personal
 Information Protection and Electronic Documents Act and the
 Telecommunications Act, SC 2010, c. 23
 s. 1 281, 282
 s. 6 279
 s. 6(1) 283
 s. 6(2) 284
 s. 7 284
 s. 8 284
 s. 10 283
 s. 11 284
 s. 20 280
 s. 21 280
 s. 22 280
 s. 82 284
 Criminal Law Improvement Act, SC 1991, c.18 53
 Bill C-667, An Act to Amend the Criminal Code and the Canada Evidence Act in
 respect of Computer Crime (1982) 53
 Bill C-74, Modernization of Investigative Techniques Act (2005) 154
 Bill S-4, An Act to Amend the Criminal Code (Identity Theft and Related Misconduct)
 (2009) 239
 Canadian Charter of Rights. and Freedoms, Part 1 of the Constitution Act 1982
 s. 2(b) 294

XX TABLE OF LEGISLATION

s. 8 353
 Copyright Act RS 1985, c.C-42
 Part IV 292
 s. 6 255
 s. 41.27 270
 s. 42 262
 s. 42(1) 263, 270
 s. 42(1)(c) 264
 s. 42(3.1) 271
 s. 43 262
 Criminal Law Amendment Act 1985 53
 Criminal Code, RSC 1985, c.C-46,
 Part VI 154, 174, 175
 Part IX 57
 Part X 233
 Part XIV 478
 s. 2 244
 s. 4(1) 344
 s. 56.1 250
 s. 56.1(1) 246, 250
 s. 56.1(2) 250
 s. 56.1(3) 243
 s. 83.01 14, 15
 s. 151 396
 s. 152–3 402
 s. 162(1) 459, 461, 467
 s. 162(1)(a) 461
 s. 162(1)(b) 462
 s. 162(1)(c) 463, 471
 s. 162(2) 468
 s. 162(3) 471
 s. 162(4) 470
 s. 162(5) 459
 s. 162(6) 471
 s. 162(7) 472
 s. 163 297, 389
 s. 163(3) 471
 s. 163.1 296, 298, 299, 304, 369
 s. 163.1(1) 308, 313
 s. 163.1(1)(a)(ii) 304
 s. 163.1(1)(b) 313
 s. 163.1(2) 325, 330, 334
 s. 163.1(3) 331, 333, 336, 338, 344

TABLE OF LEGISLATION

xxi

- s. 163.1(4) 294, 344
- s. 163.1(4.1) 339, 341
- s. 163.1(4.2) 339, 340, 341
- s. 163.1(4.3) 340
- s. 163.1(5) 363
- s. 163.1(6)(a) 371
- s. 163.1(6) 369
- s. 172.1 396
- s. 172.1(1) 63, 64
- s. 172.1(2) 396
- s. 172.1(3) 399
- s. 172.1(4) 399
- s. 173(2) 396
- s. 183 154, 161, 172, 188
- s. 184 187
- s. 184(1) 154
- s. 184(2) 154
- s. 184.1 154
- s. 184.2 154
- s. 184.4 154
- s. 184.5 151
- s. 191 139, 140
- s. 193 154
- s. 193.1 154
- s. 264(1) 426, 431, 432
- s. 264(2)(b) 442, 444, 483
- s. 264(2)(c) 450
- s. 264(2)(d) 442
- s. 264(2) 429, 435
- s. 264(3) 426
- s. 287(1)(b) 160
- s. 287(2) 161
- s. 319(2) 422
- s. 321 238
- s. 327 139
- s. 342 241
- s. 342.01 241
- s. 342.1 57, 118, 139, 187
- s. 342.1(1) 49, 57, 138
- s. 342.1(1)(a) 73, 138
- s. 342.1(1)(b) 57, 138, 154, 162, 175
- s. 342.1(1)(c) 73, 74, 138
- s. 342.1(1)(d) 138, 139

s. 342.1(2) 63, 138, 139
s. 342.1(2)(b) 64
s. 342.2 139
s. 342.2(1) 139
s. 342.2(1)(a) 139
s. 351 139
s. 372(1) 434
s. 402.1 243–244
s. 402.2(1) 246
s. 402.2(2) 250
s. 402.2(3) 246, 250
s. 402.2(5) 246
s. 430 57, 138, 139
s. 430(1.1) 49, 115, 126
s. 430(4) 119
s. 430(5) 115, 119
s. 430(8) 118
s. 487.01 456
s.487.01(c) 189
s. 487.012 191
Extradition Act, SC 1999, c.18 486
Income Tax Act 1985
s. 231.6(1) 482
Interpretation Act, RSC 1985, c. I-21
s. 35 160, 161
Protecting Canadians from Online Crime Act, SC 2014, c. 31 25, 53

New Zealand

Crimes Act 1961
Part 9A 460
Harmful Digital Communications Bill
cl. 19 425

United Kingdom

Civic Government (Scotland) Act 1982
s. 52 297
s. 52A 297
Communications. Act 2003
s. 32 281
s. 126 142
s. 127 389, 434

TABLE OF LEGISLATION

xxiii

Computer Misuse Act 1990

- s. 1 53, 57, 87, 96, 97, 98, 120, 127, 142, 143, 478
- s. 1(1) 57, 72
- s. 1(2) 58, 72, 105
- s. 1(3) 57
- s. 2 53, 57, 96, 105, 120, 127
- s. 2(1) 72
- s. 2(3) 58
- s. 2(4) 58
- s. 2(5) 58
- s. 3 53, 81, 98, 115, 119, 126–127, 142, 143, 478
- s. 3(1) 87, 115
- s. 3(2) 115
- s. 3(3) 115, 127
- s. 3(4) 127
- s. 3(5)(a)(b) 120
- s. 3(5)(c) 127, 128
- s. 3(6) 115
- s. 3A 54, 142, 478
- s. 3A(1) 142
- s. 3A(2) 143
- s. 3A(3) 143
- s. 3A(4) 142
- s. 3A(5) 142
- s. 3ZA 115, 116, 142, 143, 478
- s. 4(1) 478
- s. 4(2) 478
- s. 4(3) 478
- s. 4(4) 478
- s. 4(6) 478
- s. 8 478
- s. 17(2) 73, 97
- s. 17(3) 73
- s. 17(4) 73
- s. 17(5) 81, 97, 98
- s. 17(6) 5, 8
- s. 17(8) 81, 88, 98
- s. 17(10) 81

Copyright, Designs and Patents Act 1988

- s. 12(2) 255
- s. 107 262, 263
- s. 107(1) 270
- s. 107(1)(e) 264

xxiv	TABLE OF LEGISLATION
s. 107(2A)	270
s. 107(4)	271
s. 107(5)	271
s. 110	262
ss. 296–296ZG	262
Coroners and Justice Act 2009	
s. 61	297
s. 62	316
sch.12	297
Criminal Damage Act 1971	
s. 10(5)	120
Criminal Justice Act 1988	
s. 2(a)	370
s. 160	294, 297, 304, 344
s. 160(1)	311, 348
s. 160(2)(b)	372
s. 160(2A)	329
s. 161	344
Criminal Justice and Immigration Act 2008	
s. 63	297
Criminal Justice and Licensing (Scotland) Act 2010	
s. 39	425
Criminal Law Act 1977	
s. 1(1)	195
s. 2(2)(c)	386
Data Protection Act 1984	
s. 5	74
Data Protection Act 1998	
s. 47	280
s. 55	240
s. 60	280
Electronic Commerce (EC Directive) Regulations 2002	
Regs. 17–19	270
Extradition Act 2003	486
Forgery and Counterfeiting Act 1981	
s. 8(1)(d)	238
s. 9(1)	246
Fraud Act 2006	233, 235
s. 2(5)	235
s. 5	235
s. 6	144, 239, 247
s. 6(1)	247
s. 6(2)	247

TABLE OF LEGISLATION

XXV

- s. 6(2)(b) 144
- s. 7 144, 239
- s. 7(1) 251, 253
- s. 7(2)(b) 144
- s. 8 144, 245, 250, 253
- Identity Cards Act 2006 240
- Identity Documents Act 2010
- s. 1 240
- s. 4(2) 247
- s. 4(4) 247
- s. 5(1) 253
- s. 5(2) 253
- s. 5(3) 253
- s. 6 239–240
- s. 6(1) 247, 253
- s. 6(1)(d) 253
- s. 6(1)(e) 253
- s. 7 239–240
- s. 7(1) 245
- s. 7(2) 245
- s. 7(6) 245
- s. 8 247
- s. 9(1) 253
- s. 9(2) 246
- s. 9(3) 246
- s. 9(4)(a) 246
- S. 9(4)(b) 247
- S. 9(4)(c) 247
- S. 9(5) 253
- Indecency with Children Act 1960
- s. 1 402
- Interception of Communications Act 1985 162, 175
- Malicious Communications Act 1988
- s. 1 434
- Obscene Publications Act 1959 297, 331, 333
- Police and Criminal Evidence Act 1984
- s. 9 194
- Schedule 1 194
- Police and Justice Act 2006
- Part 5 503
- s. 36 127
- s. 37 141
- Privacy and Electronic Communications (EC Directive) Regulations 2003

xxvi	TABLE OF LEGISLATION
reg. 2	281
reg. 22	279–280, 282
reg. 22(3)	283, 284
reg. 22(4)	284
reg. 23(a)	284
reg. 23(b)	284
reg. 31	280
Schedule 1	280
Schedule 2	283
Protection from Harassment Act 1997	
s. 1	426
s. 1(1)	426
s. 1(2)	431
s. 1(3)	428
s. 2	426
s. 2A	426
s. 2A(1)	426
s. 2A(2)	426
s. 2A(2)(c)	431
s. 2A(3)	426
s. 2A(3)(d)	447, 450
s. 2A(3)(f)	447
s. 2A(4)	426
s. 4(3)	428
s. 4A(1)	426
s. 4A(3)	428
s. 4A(5)	426
s. 7(2)	432
s. 7(3)	429
s. 7(4)	429
Protection from Harassment (Northern Ireland)	
Order 1997	426
Protection of Children (Northern Ireland) Order 1978	
s. 3	197
Protection of Children Act 1978	
s. 1	297, 298, 303, 308
s. 1(1)	328
s. 1(1)(a)	325, 348
s. 1(1)(b)	332, 336, 348, 431
s. 1(1)(c)	294, 333, 344, 348, 362
s. 1(1)(d)	333
s. 1(2)	336
s. 1(4)(a)	370

TABLE OF LEGISLATION

xxvii

s. 1(4)(b) 372
s. 1B 371
s. 2(3) 316
s. 6 297, 329
s. 7(2) 311
s. 7(3) 298
s. 7(4) 312
s. 7(4A) 312
s. 7(5) 311
s. 7(6) 299
s. 7(7) 311, 316
s. 7(8) 316
s. 7(9) 312
Public Order Act 1986
Part 3 297, 422
Regulation of Investigatory Powers Act 2000
Part II 194, 456
s. 1(1) 154–155, 195
s. 1(2) 154–155
s. 1(6) 155, 164
s. 1(7) 155
s. 2(1) 163, 164
s. 2(2) 192
s. 2(3) 163
s. 2(5)(a) 177
s. 2(5)(b) 177
s. 2(6) 192
s. 2(7) 194, 195
s. 2(8) 194
s. 2(9) 177, 178
s. 2(10) 177
s. 2(10)(a) 177
s. 2(10)(b) 177
s. 3(1) 155
s. 3(2) 155, 192, 193
s. 3(3) 155
s. 5 155
s. 48(4) 193
Serious Crime Act 2007
s. 61 127
Serious Crime Act 2015
s. 41 54, 115
s. 42 54, 143

xxviii	TABLE OF LEGISLATION
s. 43	54, 478
s. 44(4)	478
Sexual Offences. Act 2003	
s. 8	405
s. 8(2)	405
s. 8(3)	405
s. 10	405
s. 10(3)	405
s. 11	402
s. 12(1)	390
s. 12(2)	390
s. 14(1)	399–401
s. 14(2)	401
s. 14(3)	401
s. 14(4)	400
s. 15	413
s. 15(1)(b)	413, 415
s. 15(2)(a)	415
s. 15(2)(b)	415
s. 15(4)	413
s. 45(2)	300
s. 48	405
s. 67	459, 467
s. 67(1)	460, 467, 469
s. 67(2)	460, 467, 469, 471
s. 67(3)	460, 467, 469
s. 67(4)	471
s. 67(5)(b)	459
s. 68	460–461
s. 68(1)	464
s. 72	401
s. 78	405
s. 79(4)	391
s. 79(5)	391
sch. 2	401
Sexual Offences (Northern Ireland) Order 2008	
Part 3	391
Art. 67	459
Sexual Offences (Scotland) Act 2009	
Part 4	391
s. 9	459
Telecommunications Act 1984	
s. 42	175

TABLE OF LEGISLATION

xxix

Terrorism Act 2000
s. 1 14
s. 57 14
Terrorism Act 2006
s. 2 297
Theft Act 1968
s. 15A 235
Wireless Telegraphy Act 2006
s. 48 155
s. 49 155

United States
Federal

15 USC
§ 7701 280
§ 7701(a)(4) 272, 280, 283
§ 7702(5) 282
§ 7702(2)(A) 282
§ 7702(6) 282
§ 7703(c)(1) 272
§ 7704(a)(1) 284
§ 7704(a)(2) 284
§ 7704(a)(3) 284
§ 7704(a)(4) 280, 283
§ 7704(a)(5) 284
§ 7704(b)(1) 284
§ 7704(b)(2) 284
§ 7704(b)(3) 284
§ 7704(d) 284
§ 7705 284
§ 7706(a) 281
§ 7706(f) 281
§ 7706(g) 281
17 USC
§ 101 263, 264
§ 302(a) 255
§ 506 259, 262, 270
§ 506(a)(1)(A) 263
§ 506(a)(1)(B) 264
§ 506(a)(1)(C) 264, 265
§ 506(a)(2) 270
§ 506(a)(3) 264

xxx	TABLE OF LEGISLATION
§ 512	262, 270
§ 1201	262, 266
§ 1202	262
§ 1204	262
18 USC	
Chapter 71	297
Chapter 113	255
Chapter 209	486
§ 7	459
§ 641	48
§ 875(c)	427, 435, 436, 437
§ 875(d)	441
§ 1028	240, 241
§ 1028(a)(1)	251
§ 1028(a)(2)	251
§ 1028(a)(3)	247
§ 1028(a)(4)	247–248
§ 1028(a)(5)	254
§ 1028(a)(6)	248
§ 1028(a)(7)	24, 251, 252
§ 1028(a)(8)	251
§ 1028(b)	240
§ 1028(d)(1)	244
§ 1028(d)(2)	254
§ 1028(d)(3)	254
§ 1028(d)(4)	244
§ 1028(d)(7)	244
§ 1028(d)(9)	251
§ 1028(d)(10)	251
§ 1028(d)(12)	251
§ 1028A	240, 252
§ 1029	144
§ 1029(c)	145
§ 1029(e)	245
§ 1029(e)(1)	145
§ 1029(e)(2)	147
§ 1029(e)(3)	147
§ 1029(e)(5)	148
§ 1030	55, 83
§ 1030 (a)(1)	106, 109
§ 1030 (a)(2)	104, 106, 110, 241
§ 1030(a)(2)(A)	102
§ 1030(a)(2)(B)	102, 103