

Contents

<i>Foreword</i>	vii
<i>Introduction</i>	xv
<i>List of Contributors</i>	xvii
<i>List of Abbreviations</i>	xix
<i>Table of Cases</i>	xxiii
<i>Table of Statutes</i>	xxxix
<i>Table of Statutory Instruments</i>	xli
<i>Table of Conventions, etc</i>	xlvi
<i>Table of Other Material</i>	xlvi
1 Offences Involving Misuse of Computers	1
1.1 Background to the Computer Misuse Act 1990	1
1.2 Section 1 of the Computer Misuse Act 1990 – unauthorised access to computers	3
1.2.1 Procedure and sentencing	4
1.2.2 Elements of the offence	5
1.2.3 Meaning of ‘unauthorised access’	7
1.2.4 Offending behaviour within the scope of section 1 of the Computer Misuse Act 1990	11
1.3 Section 2 of the Computer Misuse Act 1990 – unauthorised access with intent to commit or facilitate further offences	13
1.3.1 Procedure and sentencing	14
1.3.2 Elements of the offence	15
1.3.3 Comparison with the law of criminal attempts	16
1.3.4 Offending behaviour within the scope of section 2 of the Computer Misuse Act 1990	17
1.4 Section 3 of the Computer Misuse Act 1990 – unauthorised acts with intent to impair, or recklessness as to the impairment of, a computer	17
1.4.1 Procedure and sentencing	20
1.4.2 Elements of the offence	26

1.4.3	Offending behaviour within the scope of section 3 of the Computer Misuse Act 1990 or criminal damage	28
1.5	Types of computer misuse and charges under the Computer Misuse Act 1990	31
1.5.1	Alteration or deletion of data	31
1.5.2	Denial of Service attacks	31
1.5.3	Malware	33
1.5.3.1	Viruses	34
1.5.3.2	Trojan Horses	34
1.5.3.3	Worms	35
1.5.3.4	Spyware	35
1.5.4	Blended threats	36
1.5.5	Phishing	36
1.5.6	Pharming	37
1.5.7	Using phishing, pharming and Trojan Horses to harvest information for use in fraud	38
1.6	Section 3ZA of the Computer Misuse Act 1990 – unauthorised acts causing, or creating risk of, serious damage	39
1.6.1	Procedure and sentencing	41
1.6.2	Elements of the offences	41
1.7	Section 3A of the Computer Misuse Act 1990 – making, supplying or obtaining articles for use in offences under section 1 or section 3	42
1.7.1	Procedure and sentencing	43
1.7.2	Elements of the offences	44
1.7.3	Nature of the article	47
1.8	Meaning of ‘computer’ with regard to offences under the Computer Misuse Act 1990	47
1.9	Jurisdictional issues for offences under the Computer Misuse Act 1990	49
2	Offences Involving Data Protection	53
2.1	Overview	53
2.2	Section 170 of the Data Protection Act 2018 – unlawful obtaining or disclosure of personal data	54
2.2.1	Elements of the offence	55
2.2.2	Procedure and sentencing	57
2.2.3	Personal data	58
2.2.4	Personal data and computer misuse	60

2.2.5	Section 171: re-identification of de-identified personal data	60
2.2.6	Section 173: alteration, etc. of personal data to prevent disclosure to data subject	63
2.3	Access and disclosure of personal data	64
2.3.1	Section 184: prohibition of requirement to produce relevant records	64
2.3.2	Section 119: obstructing the Information Commissioner	66
2.4	Investigatory offences	66
2.4.1	Schedule 15, paragraph 15 to the DPA 2018: powers of entry and inspection	66
2.4.2	Section 144: false statement made in response to an information notice	67
2.4.3	Section 148 of the DPA 2018: destroying or falsifying information and documents	68
2.4.4	Section 132: prohibition placed upon the Information Commissioner and staff	68
3	Offences Relating to Property	71
3.1	Theft under the Theft Act 1968	71
3.1.1	Procedure and sentencing	71
3.1.2	Elements of the offence	72
3.1.3	Intangible property	72
3.1.4	Virtual property and digital currency	73
3.1.5	Confidential information and industrial espionage	74
3.2	Intellectual property theft – infringement of copyright under section 107 of the Copyright, Designs and Patents Act 1988	75
3.2.1	Criminal liability for infringement of copyright	77
3.2.2	Procedure and sentencing	79
3.2.3	Elements of the offence	79
3.2.4	File sharing over the internet	82
3.2.4.1	Data streaming	83
3.2.4.2	Downloading/uploading using a host website	84
3.2.4.3	Criminal liability for streaming and direct downloading	85
3.2.4.4	Peer-to-peer file sharing	85

4	Offences Involving Communications	93
4.1	Introduction	93
4.2	Section 127 of the Communications Act 2003 – improper use of public electronic communications network	93
4.2.1	Procedure and sentencing	94
4.2.2	Elements of the offence	96
4.2.3	Grossly offensive, menacing, etc. character of the communication	97
4.2.4	Public electronic communications network	101
4.3	Section 1 of the Malicious Communications Act 1988 – sending letters, etc. with intent to cause distress or anxiety	103
4.3.1	Procedure and sentencing	105
4.3.2	Elements of the offence	105
4.4	Applicability of section 127 of the Communications Act 2003 and section 1 of the Malicious Communications Act 1988 to computer communications	107
4.4.1	Internet communications, social media and trolling	107
4.4.2	Director of Public Prosecutions' guidelines regarding internet communications	110
4.5	Unlawful interception of communications	115
4.5.1	Fundamentals of interception	116
4.5.2	Procedure and sentencing	121
4.5.3	Monetary penalties for unintentional interception	122
4.5.4	Elements of the offence	124
4.5.5	Period of transmission and 'hacking' of communications	130
4.5.6	Business practices and interception	133
4.5.7	Unlawful interception, equipment interference or computer misuse	136
5	Offences Relating to Internet or Computer Content	137
5.1	Introduction	137
5.2	Section 1 of the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988 – making, possession, publication and distribution of indecent images of children	138
5.2.1	Procedure and sentencing	140
5.2.2	Elements of the offences	144

5.2.3	Downloading indecent images of children/ child-abuse images	148
5.2.4	Possession of indecent images of children/ child-abuse images in electronic format	151
5.2.5	Sexual Harm Prevention Orders	155
5.3	Section 62 of the Coroners and Justice Act 2009 and section 63 of the Criminal Justice and Immigration Act 2008 – possession of prohibited images of children and possession of extreme pornographic images	158
5.4	Section 2 of the Obscene Publications Act 1959 – publishing an obscene article or having an obscene article for gain	159
5.4.1	Procedure and sentencing	161
5.4.2	Elements of the offence	164
5.4.3	Refinement of the test for obscenity	166
5.4.4	Obscenity and publications over the internet	167
5.4.5	Jurisdiction in which internet publications take place	171
5.4.6	Obscenity and communications via the internet	173
5.5	Section 53 of the Regulation of Investigatory Powers Act 2000 – ancillary offence of failing to disclose access to computers	174
5.5.1	Procedure and sentencing	177
5.5.2	Computers and disclosure notices	179
6	Cyber Harassment and Cyber Stalking	183
6.1	Offences Against the Person	183
6.2	Sections 2 and 2A of the Protection from Harassment Act 1997 – harassment and stalking	183
6.2.1	Procedure and sentencing	187
6.2.2	Elements of the offence	189
6.2.3	Harassment and stalking	192
6.2.4	‘Cyber harassment’ and ‘cyber stalking’	193
7	Contempt of Court, the Internet and Court Reporting	201
7.1	Criminal contempt of court	201
7.1.1	Elements of the offence	202
7.1.2	Sentencing of contempts of court	203
7.1.3	Open justice and reporting of proceedings over the internet	204
7.1.4	Juries and internet misuse	208

8	Criminal Evidence and Computer Technology	215
8.1	General background to the rules of criminal evidence	215
8.1.1	Default position on admissibility	215
8.1.2	Stay of proceedings	216
8.1.3	Exclusion of evidence in course of proceedings	220
8.1.4	Discretion to exclude evidence at common law	220
8.1.5	Statutory discretion to exclude evidence under section 78 of the Police and Criminal Evidence Act 1984	223
8.2	Hearsay and computer-derived evidence	227
8.2.1	Prohibition against hearsay and admissible hearsay	227
8.2.2	Hearsay and computer evidence	232
8.2.3	Section 117: business and other documents	241
8.3	Police powers of seizure of computer evidence	242
Appendices		
A1	Criminal Procedure Rules 2015	247
A2	New Social Media Guidelines CPS	249
<i>Index</i>		267