

# TABLE OF CONTENTS

---

DEDICATION.....	III
PREFACE.....	V
ACKNOWLEDGMENTS.....	VII
TABLE OF CASES.....	XIX
TABLE OF STATUTES.....	XXIX
TABLE OF AUTHORITIES.....	XXXIII
<b>Chapter 1. Introduction.....</b>	<b>1</b>
A. Overview of Computer Crime Law.....	1
B. Comparing Physical Crimes and Computer Crimes.....	3
Notes and Questions.....	5
<b>Chapter 2. Computer Misuse Crimes.....</b>	<b>8</b>
A. Why Punish Computer Misuse?.....	8
Problem 1.....	9
Problem 2.....	10
Notes and Questions.....	10
B. Property Crimes as a Response to Computer Misuse.....	13
United States v. Seidlitz.....	15
Notes and Questions.....	18
State v. McGraw.....	22
Notes and Questions.....	25
C. Unauthorized Access Statutes.....	29
1. Introduction to Unauthorized Access Statutes.....	29
2. What Is Access?.....	31
State v. Riley.....	33
Notes and Questions.....	35
3. What Is Authorization? The Case of Code-Based Restrictions.....	38
United States v. Morris.....	41
Notes and Questions.....	47
4. What Is Authorization? The Case of Contract-Based Restrictions.....	51
United States v. Nosal.....	52
Notes and Questions.....	62
5. What Is Authorization? The Case of Norms-Based Restrictions.....	68
EF Cultural Travel BV v. Zefer Corp.....	68
Notes and Questions.....	73
D. 18 U.S.C. § 1030(a)(2) and Its Felony Enhancements.....	76
1. 18 U.S.C. § 1030(a)(2) Misdemeanor Liability.....	78
2. 18 U.S.C. § 1030(a)(2) Felony Liability.....	82

United States v. Batti .....	82
Notes and Questions .....	87
E. 18 U.S.C. § 1030(a)(4) and Computer Fraud Statutes .....	90
United States v. Czubinski .....	92
Notes and Questions .....	98
F. 18 U.S.C. § 1030(a)(5) and Computer Damage Statutes .....	100
1. 18 U.S.C. § 1030(A)(5) Misdemeanor Liability .....	100
United States v. Carlson .....	102
Notes and Questions .....	105
2. 18 U.S.C. § 1030(a)(5) Felony Liability .....	112
United States v. Middleton .....	113
Notes and Questions .....	119
United States v. Sablan .....	125
Notes and Questions .....	129
<b>Chapter 3. Traditional Crimes .....</b>	<b>136</b>
A. Economic Crimes .....	137
1. Property Crimes.....	137
People v. Johnson .....	137
Notes and Questions .....	141
United States v. Aleynikov .....	143
Notes and Questions .....	148
2. The Economic Espionage Act.....	151
United States v. Genovese .....	151
Notes and Questions .....	155
United States v. Aleynikov .....	156
Notes and Questions .....	159
3. Identity Theft and Access Device Fraud .....	160
United States v. Barrington .....	161
Notes and Questions .....	166
4. Copyright Law .....	168
a) Introduction .....	168
David Goldstone—Prosecuting Intellectual Property Crimes.....	168
Notes and Questions .....	171
b) The Willfulness Requirement .....	173
United States v. Moran .....	174
Notes and Questions .....	181
c) Total Retail Value .....	184
United States v. Armstead.....	184
Notes and Questions .....	191
d) Intent to Profit.....	192
United States v. Shabazz .....	192
Notes and Questions .....	194
e) Prosecutorial Discretion .....	197
United States Department of Justice—Illegal “WareZ”	
Organizations and Internet Piracy.....	197
Notes and Questions .....	200
B. Crimes Against Persons .....	201

1. Threats and Harassment .....	202
a) Statutory Issues .....	202
United States v. Alkhabaz .....	204
Notes and Questions .....	210
b) Constitutional Limits .....	212
United States v. Carmichael.....	213
Notes and Questions .....	221
United States v. White.....	224
Notes and Questions .....	226
2. Invasion of Privacy Crimes .....	231
C. Vice Crimes .....	232
1. Internet Gambling .....	234
Ronald J. Rychlak—Legal Problems With On–Line Gambling .....	234
Notes and Questions .....	237
United States v. Cohen .....	238
Notes and Questions .....	243
2. Obscenity .....	247
Miller v. California .....	248
Notes and Questions .....	254
United States v. Extreme Associates, Inc. ....	260
Notes and Questions .....	263
D. Child Exploitation Crimes.....	267
1. Child Pornography.....	267
a) Introduction .....	267
b) The Proxy Rationale .....	268
c) 18 U.S.C. § 2252 .....	271
d) 18 U.S.C. § 2252A and 18 U.S.C. § 2256.....	271
e) Statutory Elements of 18 U.S.C. §§ 2252 and 2252A .....	272
United States v. Shaffer.....	272
Notes and Questions .....	276
Barton v. State.....	280
Notes and Questions .....	283
f) Constitutional Issues.....	295
Ashcroft v. Free Speech Coalition .....	295
Notes and Questions .....	301
United States v. Marchand.....	304
Notes and Questions .....	312
2. Traveler Cases and Entrapment .....	314
State v. Davies .....	316
Notes and Questions .....	324
<b>Chapter 4. Sentencing .....</b>	<b>328</b>
A. Are Computer Crimes Different? .....	328
Neal Kumar Katyal—Criminal Law in Cyberspace.....	328
Notes and Questions .....	330
United States v. Lee .....	334
Notes and Questions .....	340
B. Sentencing in Child Pornography Cases .....	343

Notes and Questions .....	350
C. Sentencing in Computer Misuse Cases -----	353
United States v. Dinh.....	357
Notes and Questions .....	363
D. Supervised Release and Probation Restrictions -----	366
United States v. Paul .....	366
United States v. Sofsky .....	371
Notes and Questions .....	373
<b>Chapter 5. The Fourth Amendment .....</b>	<b>376</b>
A. The Requirement of Government Action -----	377
United States v. Jarrett .....	378
Notes and Questions .....	384
B. Defining Searches and Seizures -----	387
1. Searches .....	387
United States v. David .....	390
Notes and Questions .....	392
2. Seizures .....	401
United States v. Jefferson.....	402
Notes and Questions .....	406
C. Exceptions to the Warrant Requirement-----	409
1. Exigent Circumstances.....	409
United States v. Trowbridge.....	410
Notes and Questions .....	415
2. Consent.....	419
a) Scope of Consent -----	420
United States v. Al-Marri.....	420
Notes and Questions .....	424
b) Third-Party Consent -----	430
United States v. Buckner.....	430
Notes and Questions .....	433
c) Apparent Authority -----	435
United States v. Andrus.....	436
Notes and Questions .....	442
3. Search Incident to Arrest .....	445
Schlossberg v. Solesbee .....	445
Notes and Questions .....	450
4. Border Searches.....	452
United States v. Arnold.....	452
Notes and Questions .....	457
5. Government Workplace Searches.....	462
Leventhal v. Knapek .....	464
Notes and Questions .....	471
D. Searching and Seizing Computers With a Warrant -----	473
1. Probable Cause and Particularity .....	474
United States v. Adjani.....	476
Notes and Questions .....	486
2. The Physical Search Stage.....	495

United States v. Hill.....	496
Notes and Questions .....	501
3. The Electronic Search Stage.....	504
United States v. Williams .....	505
Notes and Questions .....	509
4. Ex Ante Restrictions on Computer Warrants.....	513
In re Application For A Search Warrant To Seize and Search Electronic Devices From Edward Cunnius .....	513
Notes and Questions .....	522
5. Encryption.....	528
a) Fourth Amendment Issues.....	528
b) Fifth Amendment Issues .....	532
In re Subpoena Duces Tecum .....	533
Notes and Questions .....	540
E. The Fourth Amendment and Computer Networks.....	541
1. Analogies to Speech, Letters, and Telephone Calls.....	543
2. Non-content Information.....	552
United States v. Forrester .....	552
Notes and Questions .....	556
3. Content Information.....	559
United States v. Warshak.....	559
Notes and Questions .....	564
<b>Chapter 6. Statutory Privacy Protections.....</b>	<b>574</b>
A. The Wiretap Act .....	579
1. The Basic Structure.....	580
O'Brien v. O'Brien .....	580
Notes and Questions .....	583
2. The Consent Exception.....	592
Griggs–Ryan v. Smith .....	592
Notes and Questions .....	596
3. The Provider Exception.....	602
United States v. Auler.....	603
Notes and Questions .....	607
McClelland v. McGrath .....	609
Notes and Questions .....	611
4. The Computer Trespasser Exception .....	613
United States Department of Justice—Field Guidance on New Authorities That Relate to Computer Crime and Electronic Evidence Enacted in the USA Patriot Act of 2001 .....	615
Notes and Questions .....	616
B. The Pen Register Statute .....	618
In re Application of the United States of America .....	620
Notes and Questions .....	627
C. The Stored Communications Act .....	632
1. The Basic Structure.....	633
Notes and Questions .....	640
2. Compelled Disclosure Under § 2703.....	648

United States v. Weaver .....	648
Notes and Questions .....	652
3. Voluntary Disclosure Under § 2702 .....	660
Andersen Consulting LLP v. UOP .....	660
Notes and Questions .....	662
Jayne v. Sprint PCS .....	664
Notes and Questions .....	666
D. Problems .....	671
Problem One .....	671
Problem Two .....	672
Problem Three .....	672
<b>Chapter 7. Jurisdiction .....</b>	<b>674</b>
A. Federal Power .....	675
1. Constitutional Limits .....	675
United States v. Jeronimo–Bautista .....	676
Notes and Questions .....	682
2. Substantive Statutory Limits .....	682
United States v. Kammersell .....	682
Notes and Questions .....	685
United States v. Lewis .....	687
Notes and Questions .....	690
3. Procedural Statutory Limits .....	693
a) Statutory Privacy Laws .....	693
b) National Versus Local Orders .....	694
B. State Power .....	697
1. Substantive Limits .....	697
American Library Association v. Pataki .....	697
Notes and Questions .....	705
2. Procedural Limits .....	710
State v. Reid .....	711
Notes and Questions .....	718
State v. Signore .....	718
Notes and Questions .....	720
C. International Computer Crimes .....	724
1. United States Substantive Law .....	724
United States v. Ivanov .....	725
Notes and Questions .....	731
2. United States Procedural Law .....	734
United States v. Barona .....	735
Notes and Questions .....	743
3. Mutual Legal Assistance and International Treaties .....	752
In re Request from the Russian Federation Pursuant to the Treaty Between the United States of America and the Russian Federation .....	752
Notes and Questions .....	759

---

Michael A. Sussmann—The Critical Challenges From International High-Tech and Computer-Related Crime at the Millennium .....	760
Notes and Questions .....	768
Council of Europe—Convention on Cybercrime .....	770
Notes and Questions .....	777
4. Foreign Computer Crime Law .....	779
Rex v. Bow Street Magistrates' Court.....	780
Notes and Questions .....	786
<b>Chapter 8. National Security .....</b>	<b>788</b>
A. The Fourth Amendment .....	789
United States v. United States District Court .....	790
Notes and Questions .....	798
B. The Foreign Intelligence Surveillance Act.....	807
Notes and Questions .....	813
C. Use of FISA Evidence in Criminal Cases .....	817
United States v. Squillacote .....	818
Notes and Questions .....	824
INDEX.....	829