Cyber Crime and Digital Evidence: Materials and Cases

Thomas K. Clancy

LexisNexis

CYBER CRIME AND DIGITAL EVIDENCE:

MATERIALS and CASES

Thomas K. Clancy
Director and Research Professor
National Center for Justice and the Rule of Law
University of Mississippi School of Law

LexisNexis®

ISBN: 978-1-4224-9408-0

Library of Congress Cataloging-in-Publication Data

Clancy, Thomas K.
Cyber crime and digital evidence : materials and cases / Thomas K. Clancy.
p. cm.
Includes bibliographical references and index.
ISBN 978-1-4224-9408-0 (hardbound)
1. Electronic evidence--United States. 2. Evidence, Documentary--United States. 3. Electronic records--Law and legislation--United States. 4. Computer crimes--United States. I. Title.
KF8947.5.C58 2011
345.73'0268--dc23
2011033094

NOTE TO USERS
To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

MATTHEW BENDER

(2011–Pub.3330)

PREFACE

This book is designed to be an accessible introduction to Cyber Crime and Digital Evidence. The title is consciously styled: *Cyber Crime and Digital Evidence: Materials and Cases.* The title illuminates two significant aspects of this book. First, cyber crime is only a subset of a much broader trend in the criminal area, which is the use of digital evidence in virtually all criminal cases. Hence, it is important to understand the legal framework that regulates obtaining that increasingly used and important evidence. Second, by listing "materials *and* cases" — in that order — the title signals that this book attempts to provide a broader framework than an endless stream of cases offers. Law students deserve the broader context and, hopefully, will get some of it with this book.

This book is the product of numerous influences, ranging from many years of teaching law students, studying the Fourth Amendment and cyber crime, and witnessing the explosion of the use of digital evidence in criminal cases. Most immediately, I thank those who provided comments and insights on various aspects of the book. Those individuals include Don Mason, Will Wilkins, and Priscilla Grantham. I received invaluable editorial assistance from Andrew Coffman. For the past decade, I have had the privilege of serving as Director of the National Center for Justice and the Rule of Law and Research Professor at the University of Mississippi School of Law, where I created and developed national programs on cyber crime and the Fourth Amendment. Through those programs, the Center offers educational opportunities to judges, prosecutors, and law enforcement on search and seizure, including in emerging areas such as computer searches and seizures, and on broad areas concerning cyber crime. The conferences, lectures, and associations developed at the Center have brought many of the best minds in the country to Oxford, Mississippi to examine the new trends in the criminal law involving new forms of criminal activity and new forms of evidence. The thousands of judges, assistant attorneys general, and other attendees of the Center's events contributed many insights about actual litigation and law enforcement practices, as well as other challenges involved in adapting criminal law, procedure, and practice to the digital age. From each of those participants I have learned much and I deeply appreciate their contributions.

Thomas K. Clancy
December 1, 2011

A NOTE ON EDITING

The cases and materials in this book are extensively edited and most changes are done without acknowledgment of omissions of text or other material. Footnotes may be omitted or numbering changed. Capitalization and formatting are often changed based on omissions to the text. The reader should always consult the original source before citing or quoting material herein.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS