

Law Reform & Cybercrime

Professor Ian Walden

Centre for Commercial Law Studies, Queen Mary University of London

Substantive offences

- Stand-alone statute
 - Legislative efficiency & publicity
 - Relationship to existing offences
- Piece-meal reform
 - Amending the penal code & criminal procedure
- Computer integrity offences
 - ‘protected computers’
- Content & contact-crimes
 - Criminal defamation & intermediary liability
- Sanctions & remedies
 - Legal persons

Criminal procedure

- Powers
 - For whom?
 - ‘Law enforcement’
 - By whom?
 - Authorisation: Judicial, administrative or executive
 - Standards: ‘probable cause’ & ‘necessary and proportionate’
 - Encryption: security & ‘back-doors’
 - Procedural offences
- Safeguarding rights
 - Non-citizens/residents
 - Transparency & notification (pre, post)
 - Oversight

International co-operation

- Inter-state
 - Mutual legal assistance
 - modernization
 - Direct access to forensics
 - Open source
 - Service providers
- Networks
 - Building relationships
- Not too high, nor too low, but just right!
 - International co-operation
 - e.g. Nigeria (death penalty) & US (consecutive sentences)
 - e.g. 'double criminality': Minimum 12 months imprisonment

Reform process

- Multi-stakeholder involvement
 - e.g. Kenya ‘Interagency Technical Committee on the Development of a Comprehensive Cybercrime Law’
- Civil society
 - ‘Article 19’
- Technical community
 - e.g. universities
- Law enforcement
 - Police & national security agencies
- External expert input
- ‘Next steps’ capacity building
 - Law enforcement, prosecutors, judiciary