COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Cybercrime: the criminal law response

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1

1 Cybercrime – current challenges

Dependency of societies on information and communication technologies. This dependency makes societies highly vulnerable to cybercrimes

- Shift in the threat landscape: from broad, mass, multi-purpose attacks to specific attacks on specific users, groups, organisations or industries, increasingly for economic criminal purposes
- Malware – that is, malicious codes and programmes including viruses, worms, trojan horses, spyware, bots and botnets – is evolving and rapidly spreading
- Spam nuisance and carriers of malware
- Child pornography and sexual exploitation on the internet increasingly commercial
- Offenders increasingly organising for crime aimed at generating illicit profits
- Offences related to identity theft
- Use of internet for terrorist purposes (attacks against infrastructure, logistics, recruitment, finances, propaganda)
- Botnets one of the central tools of criminal enterprises (DDOS, extortion, placing of adware and spyware)
- Growing risk of cyber-attacks against critical infrastructure

But: Vast majority of people use ICT for legitimate purposes
Need to balance security and civil rights concerns

2

2 The criminal law response

- Criminalise certain conduct ▶ substantive criminal law
- Give law enforcement/criminal justice the means to investigate, prosecute and adjudicate cybercrimes (immediate actions, electronic evidence) ▶ criminal procedure law
- Allow for efficient international cooperation ▶ harmonise legislation, make provisions and establish institutions for police and judicial cooperation, conclude or join agreements

3

3

Substantive law

Legislation to deal with – as a minimum:

- Illegal access to a computer system ("hacking", circumventing password protection, key-logging, exploiting software loopholes etc)
- Illegal interception (violating privacy of data communication)
- Data interference (malicious codes, viruses, trojan horses etc)
- System interference (DOS attacks and other forms of hindering the lawful use of computer systems)
- Misuse of devices (tools to commit cyber-offences)
- Computer-related forgery (similar to forgery of tangible documents)
- Computer-related fraud
- Child pornography
- Hate speech, xenophobia and racism
- Infringement of copyright and related rights

Criminalising specific techniques/technologies or conduct?

4

4

Procedural law

Legislation to provide for – as a minimum:

- **Expedited preservation of stored computer data**
- **Expedited preservation and partial disclosure of traffic data**
- **Production order**
- **Search and seizure of stored computer data**
- **Real-time collection of traffic data**
- **Interception of content data**
- **Procedural safeguards**

5

International cooperation

- **Minimum of harmonisation of substantive and procedural criminal law**
- **Expedited cooperation + mutual legal assistance**
- **Agreement to cooperate**
- **Legal basis for cooperation**

6

3 The Convention on Cybercrime

- Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA
- Opened for signature in Budapest in November 2001
- In force since July 2004

The Protocol on Xenophobia and Racism Committed through Computer Systems

- Opened for signature in January 2003
- In force since March 2006

7

7

Structure and content of the Convention

Chapter I: Definitions

Chapter II: Measures at national level
- Section 1 - Substantive criminal law (offences to be criminalised)
- Section 2 - Procedural law
- Section 3 - Jurisdiction

Chapter III: International cooperation
- Section 1 - General principles
- Section 2 - Specific provisions

Chapter IV: Final provisions

8

8

Chapter II – Measures at national level

Section 1 – Substantive criminal law

- Title 1 - Offences against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, data interference, system interference, misuse of devices)
- Title 2 – Computer-related offences (forgery, fraud)
- Title 3 – Content-related offences (child pornography)
- Title 4 – Infringements of copyright and related rights
- Title 5 – Ancillary liability and sanctions (attempt, aiding, abetting, corporate liability, sanctions and measures)

Section 2 – Procedural law

- Title 1 – Common provisions (scope of procedural provisions, conditions and safeguards)
- Title 2 – Expedited preservation of stored computer data (and traffic data and partial disclosure)
- Title 3 – Production order
- Title 4 – Search and seizure of stored computer data
- Title 5 – Real-time collection of computer data (traffic data, interception of content data)

These apply to all criminal offences involving a computer system!

Chapter III - International cooperation
Section 1 – General principles

- Art 23 General principles on international cooperation
- Art 24 Principles related to extradition
- Art 25 Principles related to mutual legal assistance
- Art 26 Spontaneous information
- Art 27 MLA in the absence of applicable international instruments
- Art 28 Confidentiality and limitation on use

11

Chapter III - International cooperation...
Section 2 – Specific provisions

- Art 29 - Expedited preservation of stored computer data
- Art 30 - Expedited disclosure of preserved computer data
- Art 31 - Mutual assistance re accessing stored computer data
- Art 32 - Trans-border access to stored computer data (public/with consent)
- Art 33 - Mutual assistance in real-time collection of traffic data
- Art 34 - Mutual assistance re interception of content data
- Art 35 - 24/7 network

12

Chapter IV – Final provisions

- Art 36 Signature and entry into force (open to member States and non-members which have participated in its elaboration)
- Art 37 Accession (any State may accede following majority vote in Committee of Ministers and unanimous vote by the parties entitled to sit on the Committee of Ministers)
- Art 40 – 43 Declarations, reservations
- Art 46 – Consultations of the parties

13

13

Implementation – current status

- The Convention entered into force in July 2004
- 22 ratifications + 21 signatures (as of February 2008)
- Signed by Canada, Japan, South Africa, ratified by USA
- Costa Rica and Mexico have been invited to accede
- Legislative amendments underway in many other countries (Argentina, Brazil, Colombia, Egypt, India, Nigeria, Philippines etc.) and accession to the Convention under consideration

14

Implementation of the Convention

Ratified:

- Albania
- Armenia
- Bosnia and Herzegovina
- Bulgaria
- Croatia
- Cyprus
- Denmark
- Estonia
- Finland
- France
- Hungary
- Iceland
- Latvia
- Lithuania
- Netherlands
- Norway
- Romania
- Slovakia
- Slovenia
- The „former Yugoslav Republic of Macedonia“
- Ukraine
- United States of America

Signed:

- Austria
- Belgium
- Canada
- Czech Rep
- Germany
- Greece
- Ireland
- Italy
- Japan
- Luxembourg
- Malta
- Moldova
- Montenegro
- Poland
- Portugal
- Serbia
- South Africa
- Spain
- Sweden
- Switzerland
- United Kingdom

Invited to accede:

- Costa Rica
- Mexico

15

Model law function of the Convention

- Use as a checklist
- Compare provisions
- Use wording

Provision of Convention	Provision in national law
Art 4 System interference	?
Art 6 Misuse of devices	?
Art 9 Child pornography	?
Art 16 Expedited preservation	?
Art 18 Production order	?

16

16

4 The Project on Cybercrime

Project objective: To promote broad implementation of the Convention on Cybercrime (ETS 185) and its Protocol on Xenophobia and Racism (ETS 189)

Output 1: Legislation
Draft laws meeting the standards of ETS 185 and 189 available in at least 10 European and 5 non-European countries

Output 2: Criminal justice capacities
Capacities of criminal justice systems strengthened to investigate, prosecute and adjudicate cybercrime

Output 3: International cooperation
Capacities of criminal justice bodies to cooperate internationally re-enforced

Start: Sep 06

End: Feb 09

Funding Sep 06 – Apr 08:

- **CoE and Microsoft**

Additional funding required for 2008/9:

- **Euro 355,000+**

17

17

5 Issues (1)

Does the Convention provide a global framework?

Need for a global harmonisation/compatibility of

- substantive criminal law
- procedural law
- Efficient international cooperation

- The Convention on Cybercrime provides such a framework
- Open for accession to third countries
- Currently used as a guideline for legislation around the world

18

Issues (2)

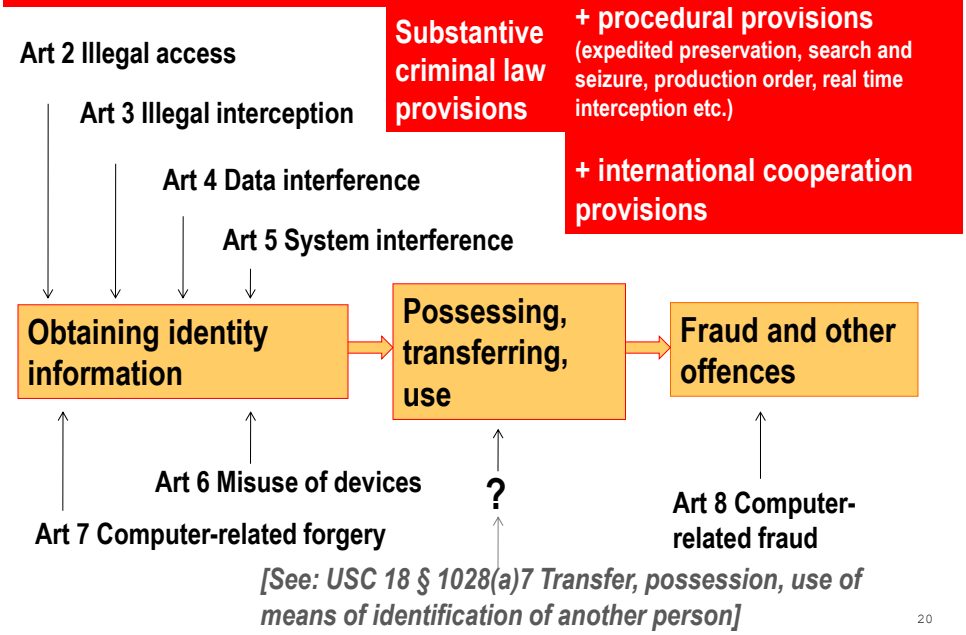
How does the Convention cover attacks against critical information infrastructure or cyber-terrrorism?

- Cyberattacks covered by Art 4 (data interference) and Art 5 (system interference) of the Convention on Cybercrime
- Investigative tools and international cooperation provisions of the Convention can also be applied against cyberterrorism

19

19

Issues (3): does the Convention cover phishing / identity theft?



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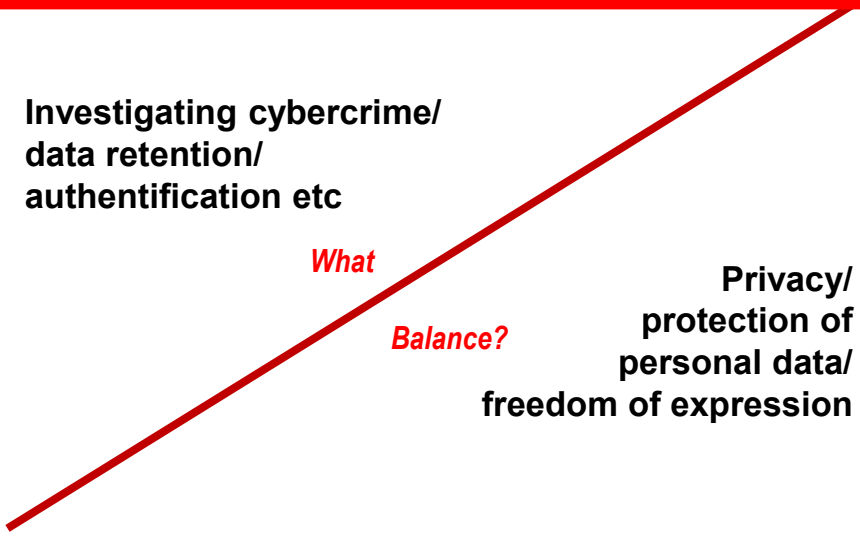
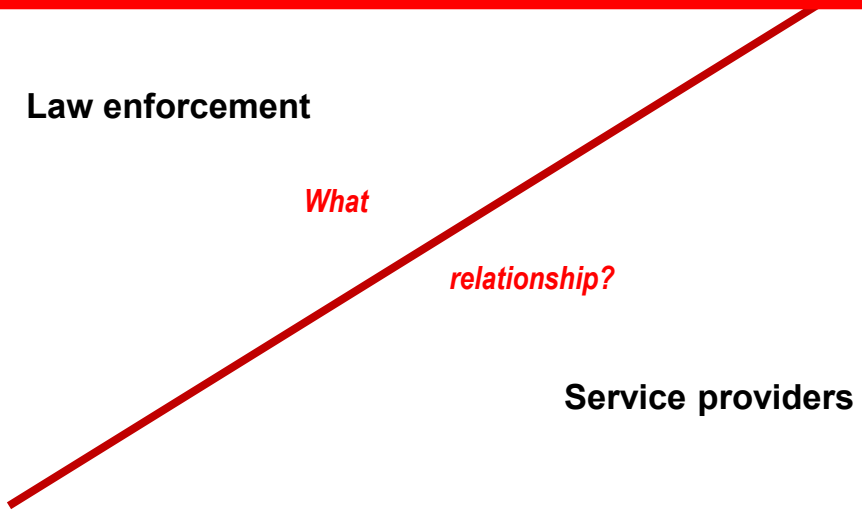
Issues (4)



21

Issues (5)



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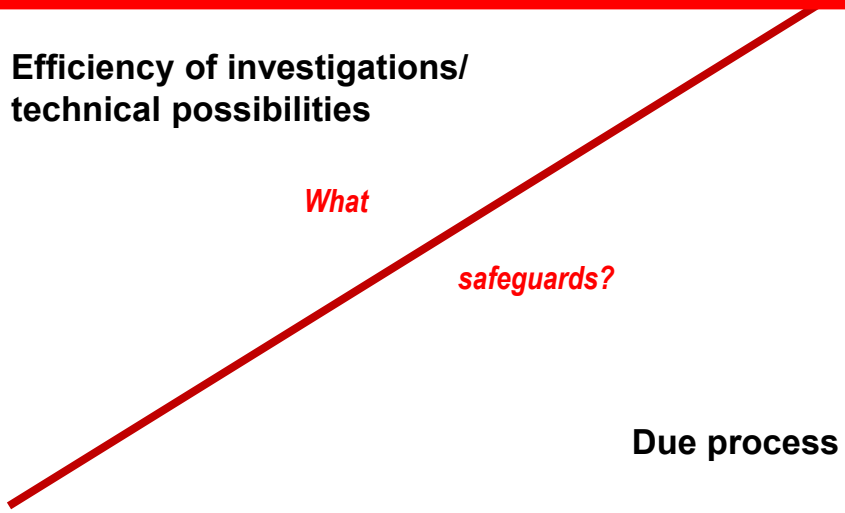
Issues (6)



23

6 The way ahead

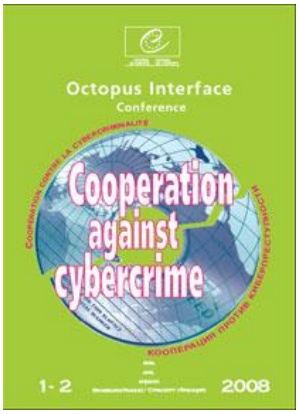
- Support strengthening and harmonisation of cybercrime legislation worldwide using the Convention as a guideline
- Promote accession to the Convention as a framework for international cooperation
- Clear legal basis for public-private partnership
- Guidelines for cooperation between ISP and law enforcement
- Strengthen law enforcement/criminal justice capacities
- Balance security concerns and civil rights

24

Coming up:

Conference on

Cooperation against cybercrime



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25

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Thank you.

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26