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The Convention on Cybercrime: meeting a global challenge

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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

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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

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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

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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

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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)

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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!

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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

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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

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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

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Implementation – current status

- The Convention entered into force in July 2004
- 22 ratifications + 22 signatures (as of 1 April 2008)
- Signed by Canada, Japan, South Africa, ratified by USA
- Costa Rica, Mexico, Philippines 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

= Convention provides a global standard

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4 Accession to the Convention - benefits for countries of Asia and Pacific

- Coherent national approach to legislation on cybercrime
- Facilitates the gathering of electronic evidence
- Facilitates the investigation of cyberlaundering, cyberterrorism and other serious crime
- Harmonisation and compatibility of criminal law provisions on cybercrime with those of other countries
- Legal and institutional basis for international law enforcement and judicial cooperation with other parties to the Convention
- Participation in the Consultations of the Parties
- The treaty as a platform facilitating public-private cooperation

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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	?

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5 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:

- **CoE, Microsoft, Estonia**

Additional funding required

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6 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

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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

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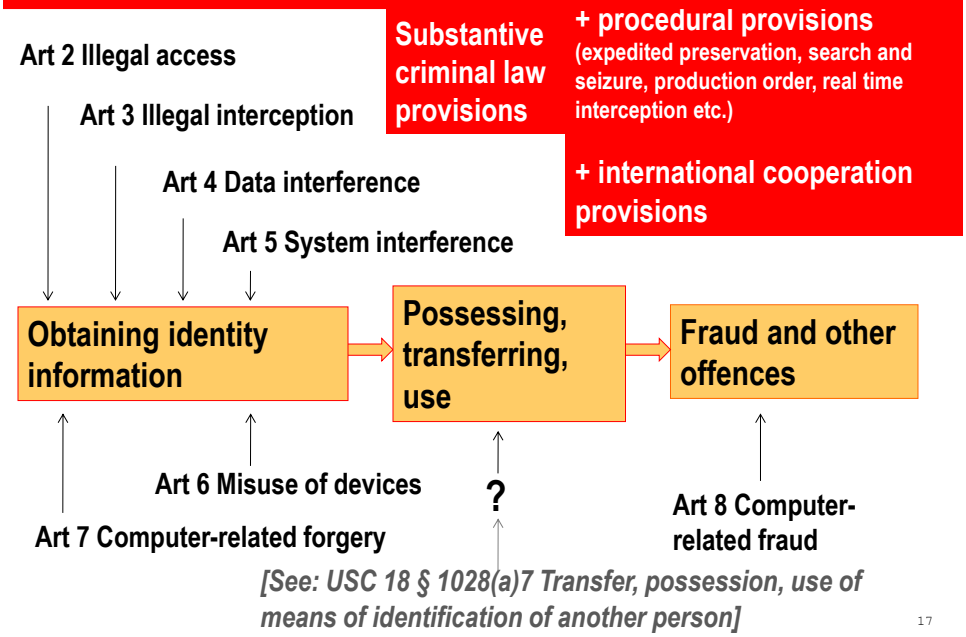
Issues (3): does the Convention cover phishing / identity theft?



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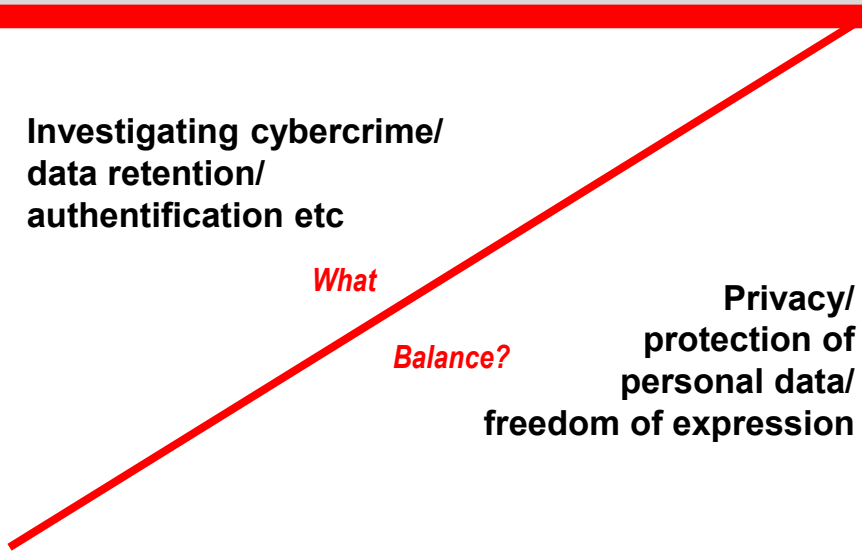
Issues (4)



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Issues (5)

Efficiency of investigations/ technical possibilities

What

safeguards?

Due process

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Issues (6)

Law enforcement

What

relationship?

Service providers

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Issues (6): Law enforcement – ISP cooperation

Guidelines for the cooperation between law enforcement and internet service providers against cybercrime

Adopted at the global Conference on Cooperation against Cybercrime (Council of Europe, Strasbourg, 1-2 April 2008:

- **Common measures (including protection of rights and freedoms)**
- **Measures to be taken by law enforcement**
- **Measures to be taken by service providers**

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7 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**

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Thank you.

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