ICTA

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Session 4

Law enforcement – service provider cooperation in the investigation of cybercrime

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www.coe.int/cybercrime

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1 Why cooperating with ISPs?

They have information that is important evidence in cybercrime proceedings:

- Subscriber information
- Internet traffic data (log-files, IP-related data)
- Content data

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EXAMPLE

European Court of Human Rights K.U. v. Finland (application no. 2872/02) of 2 December 2008

- Malicious misrepresentation of a 12-year old boy by publication by an unknown person of intimate details and offer of sexual services on a dating site in 1999
- ISP refused to provide information on identity of person who had posted the information
- No legal provision in place at the time in Finland allowing an ISP to disclose subscriber information
- European Court of Human Rights found violation of Article 8 (Right to Private Life) of the European Convention on Human Rights
- Government failed in its positive obligation to protect the private life by failing to put criminal law measures in place that would allow effective investigation and prosecution
- Quoting Convention on Cybercrime and LEA-ISP guidelines

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Why law enforcement authorities (LEA) / Internet service provider (ISP) cooperation is necessary:

- Information society dependend on ICT - vulnerable to cybercrime - Need to enhance security of ICT
- LEA and ISP play crucial role in a secure Internet
- LEA investigations often not possible without ISP cooperation
- Ensure efficient work of LEA
- Protect ability of ISP to provide services
- Ensure due process
- Protect rights of users
- How to enhance, how to structure cooperation?
- Guidelines

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2 Background to Guidelines for the cooperation between law enforcement agencies and Internet service providers in the investigation of cybercrime

- Developed by working group under the Council of Europe Project on Cybercrime (October 2007 – March 2008)
- Adopted by the global Octopus Conference on Cybercrime in April 2008
- Complemented by background study
- Available in multiple languages (www.coe.int/cybercrime -> resources)

To be taken into account:

- Diverse set of stakeholders
- Make use of good practices
- Security – human rights: conflicting or mutually reinforcing?
- Applicability global
- Supplement/not replace legislation
- To be based on common legal standards

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Common legal standard:

The Convention on Cybercrime

- Substantive criminal law: criminalising conduct
- Procedural measures: expedited preservation, production order, search and seizure, interception of data
- International cooperation

= LEA - ISP cooperation required for procedural law and international cooperation measures

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Law enforcement authorities (LEA) / Internet service provider (ISP) cooperation: developing guidelines

Background study/good practices:

- Formal and informal relationships
- German E-Commerce Association/BKA agreement Nov 2007
- MoUs Microsoft – LEA in different countries (criminal compliance programmes)
- eBay ELBA (electronic LE request processing system)
- AFA ISP-LEA training
- ECO SpotSpam
- Digital Phishnet
- French Signal Spam project
- MS CETS
- ISP training LEA

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Law enforcement authorities (LEA) / Internet service provider (ISP) cooperation: developing guidelines

Background study/bad practices:

- One request for multiple accounts
- Multiple requests that are LEA fishing expeditions
- LEA request for content without appropriate legal procedure
- Unclear, unspecific requests
- Requests sent to wrong person or provider
- ISP refuse to provide information without clear reason
- LEA receive incomplete responses/information
- Preservation requests not followed by production order
- Risk of human rights violation

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Law enforcement authorities (LEA) / Internet service provider (ISP) cooperation: developing guidelines

Background study/controversies:

- Small versus large ISPs
- Cost
- ISP liability
- ISP reporting requirement

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

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

Common guidelines for LEA and ISP:

- Develop a culture of cooperation
- Develop written procedures for cooperation with each other
- Cooperate for the protection of rights and freedoms of individuals
- Respect each others roles, rights and limitations
- Mindful of cost of cooperation
- Etc

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Measures to be taken by law enforcement

- Broad and strategic cooperation with ISP
- Procedures for legally binding requests
- Designated and trained personnel for cooperation
- Verification of source of requests
- Standard request format
- Specificity and accuracy of requests
- Follow preservation orders with production/disclosure orders
- Criminal compliance programme
- International requests: 24/7 network and formal mutual legal assistance

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Measures to be taken by ISPs

- Report criminal incidents
- Assist LEA with training and other support
- Procedures for responding to requests
- Designated and trained personnel for cooperation
- Emergency assistance outside business hours
- Criminal compliance programme
- Verification of source of requests
- Standard response format
- Explanation for information not provided
- Coordination among ISP

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Important:

- Guidelines, not binding
- Not substitute for procedural law and other formal regulations
- Based on good practices already available
- Help LEA and ISP in any country to structure their cooperation

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4 For discussion:

- How are ISPs organised in South Asia?
- What cooperation between LEA and ISPs? Have agreements been concluded? Regular meetings? Role of ISP associations?
- Procedures for legally binding requests (eg search and seizure, interception, preservation, production orders)
- Designated and trained personnel for cooperation
- Standard request format
- Specificity and accuracy of requests

Next steps:

- Organise LEA-ISP meetings to discuss cooperaton?
- establish LEA-ISP working group to develop country-specific guidelines?

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Thank you.

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