



GLACY+

Global Action on Cybercrime Extended

Workshop on cybercrime reporting systems and criminal justice statistics
6 July 2017, Tonga

Update on international cooperation and access to evidence in the cloud

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Strengthening the rule of law in cyberspace: The framework of the Budapest Convention on Cybercrime

1 Common standards: Budapest Convention on Cybercrime and relates standards

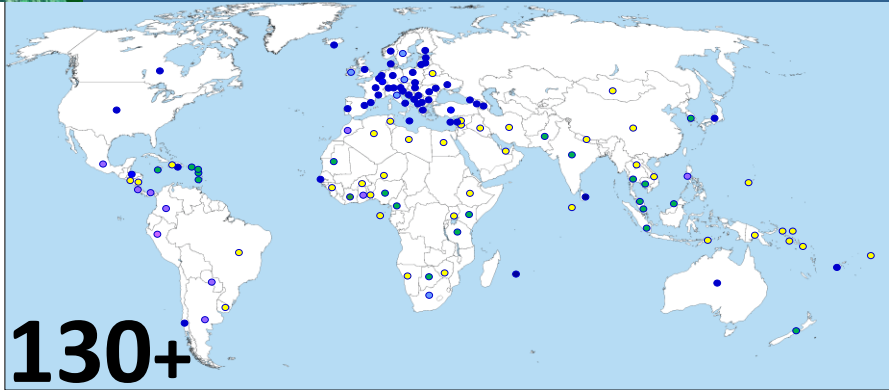


2 Follow up and assessments: Cybercrime Convention Committee (T-CY)

3 Capacity building: C-PROC

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Reach of the Budapest Convention and capacity building



130+

- Ratified/acceded: 55
- + Signed: 5
- + Invited to accede: 8
- = 68**

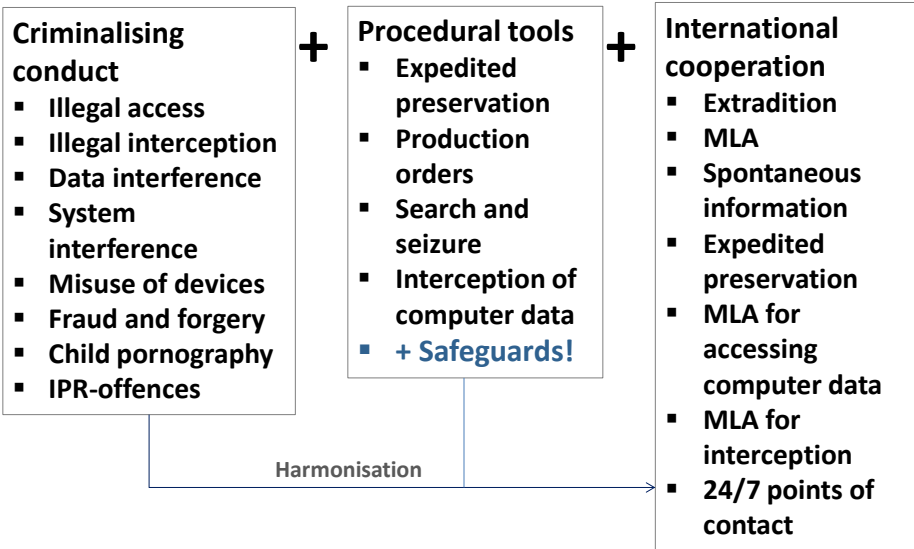


- Other States with laws/draft laws largely in line with Budapest Convention = 20+
- Further States drawing on Budapest Convention for legislation = 45+



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Adopt legislation in line with the Budapest Convention



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Cybercrime and electronic evidence: challenges

Offences against and by means of computers (Cybercrime)

- ▶ Attacks against core values of democratic societies

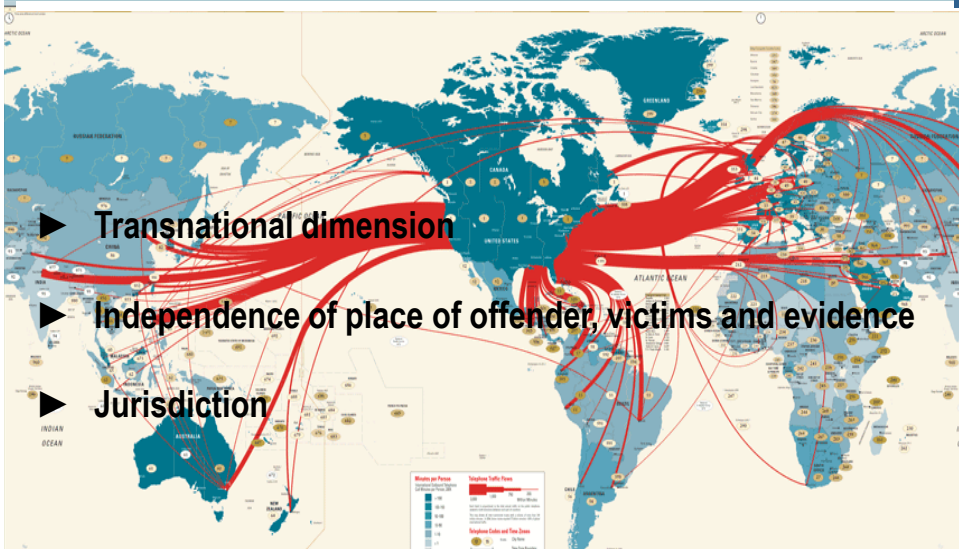
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Evidence in relation to any crime stored on computer systems or storage devices

- ▶ Often “somewhere” in the cloud)

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Where is the evidence in cyberspace?



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Cybercrime and electronic evidence: Challenges for criminal justice

- The scale and quantity of cybercrime, devices, users and victims
- Technical challenges (VPN, anonymisers, encryption, VOIP, NATs etc.)
- **Cloud computing, territoriality and jurisdiction**
 - Cloud computing: distributed systems ► distributed data ► distributed evidence
 - Unclear where data is stored and/or which legal regime applies
 - Service provider under different layers of jurisdiction
 - Unclear which provider for which services controls which data
 - Is data stored or in transit ► production orders, search/seizure or interception?
- The challenge of mutual legal assistance
- No data ► no evidence ► no justice

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Crime and jurisdiction in cyberspace ► solutions proposed under the Budapest Convention on Cybercrime

Issues:

- Differentiating subscriber versus traffic versus content data
- Limited effectiveness of MLA
- Loss of location and transborder access jungle
- Provider present or offering a service in the territory of a Party
- Voluntary disclosure by US-providers
- Emergency procedures
- Data protection

Solutions:

1. More efficient MLA
2. Guidance Note on Article 18
3. Domestic rules on production orders (Article 18)
4. Cooperation with providers: practical measures
5. Protocol to Budapest Convention

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Production orders

Budapest Convention Article 18 – Production order

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

a **a person in its territory** to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and

b **a service provider offering its services in the territory** of the Party to submit subscriber information relating to such services in that service provider's possession or control.

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Current practice: "Voluntary" disclosure by private sector entities

Parties	Requests for data sent to Apple, Facebook, Google, Microsoft, Twitter and Yahoo in 2015		
	Received	Disclosure	%
Australia	6 777	4 580	47%
Belgium	1 992	1 453	68%
Bulgaria	8	2	25%
Canada	1 157	884	76%
Finland	227	172	76%
France	27 213	14 746	54%
Germany	29 092	15 469	53%
Japan	2 018	1 112	55%
Netherlands	1 605	1 213	76%
Portugal	3 255	1 751	54%
Romania	76	30	39%
United Kingdom	29 937	21 075	70%
USA	89 350	70 116	78%
Total excluding USA	138 612	82 529	60%
Total including USA	227 962	152 644	67%

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“Voluntary” disclosure by private sector entities to ASEAN countries

Parties	Requests for data sent to Facebook, Google, Microsoft in 2016		
	Received	Disclosure	%
Brunei	3	0	0%
Cambodia	0	0	0%
Indonesia	39	7	18%
Laos	0	0	0%
Malaysia	44	26	59%
Myanmar	1	0	0%
Philippines	15	2	13%
Singapore	3 169	1 594	50%
Thailand	15	0	0%
Vietnam	0	0	0%
Australia	5 794	3 819	66%
France	26 055	15 869	61%
Germany	34 169	19 094	56%
Portugal	3 809	2 269	60%

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Evidence in the Cloud: towards solutions

Solutions:

1. More efficient MLA
2. Guidance Note on Article 18
3. Domestic rules on production orders (Article 18)
4. Cooperation with providers: practical measures
5. Protocol to Budapest Convention

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Solution1: More efficient MLA

- **Implement legal and practical measures**
 - Statistics to monitor effectiveness of international cooperation
 - More resources and training
 - Electronic transmission of requests
 - Streamlining of procedures
 - Etc.
- **Parties to establish emergency procedures for obtaining data in their MLA systems**
- **Parties to facilitate access to subscriber information in domestic legislation (full implementation of Article 18 Budapest Convention)**

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Solution 2: Guidance Note on Article 18

Guidance Note on Article 18 Budapest Convention on production of subscriber information:

- **Domestic production orders for subscriber information if a provider is in the territory of a Party even if data is stored in another jurisdiction (Article 18.1.a)**
- **Domestic production orders for subscriber information if a provider is NOT necessarily in the territory of a Party but is offering a service in the territory of the Party (Article 18.1.b)**
- ▶ **Foresee this in your domestic law**

*Agreed by T-CY
on 28 Feb 2017*

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Solution 5: Protocol to Budapest Convention

- A. Provisions for more efficient MLA**
- B. Provisions for direct cooperation with providers in other jurisdictions**
- C. Framework and safeguards for existing practices of transborder access to data**
- D. Data protection**

Terms of reference for preparation of a Protocol agreed by T-CY in June 2017. Work will start in September 2017.

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