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| Council of Europe | Global Network Initiative Discussion Forum Washington DC, 30 January 2009 |
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Law enforcement, privacy, human rights, and multi-national corporations:

The question of law enforcement – ISP cooperation in the investigation of cybercrime

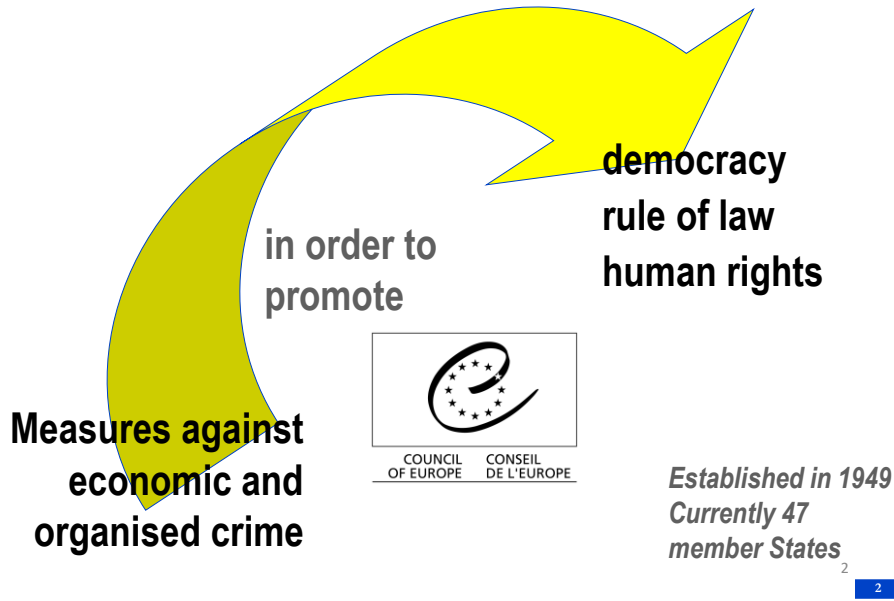
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1

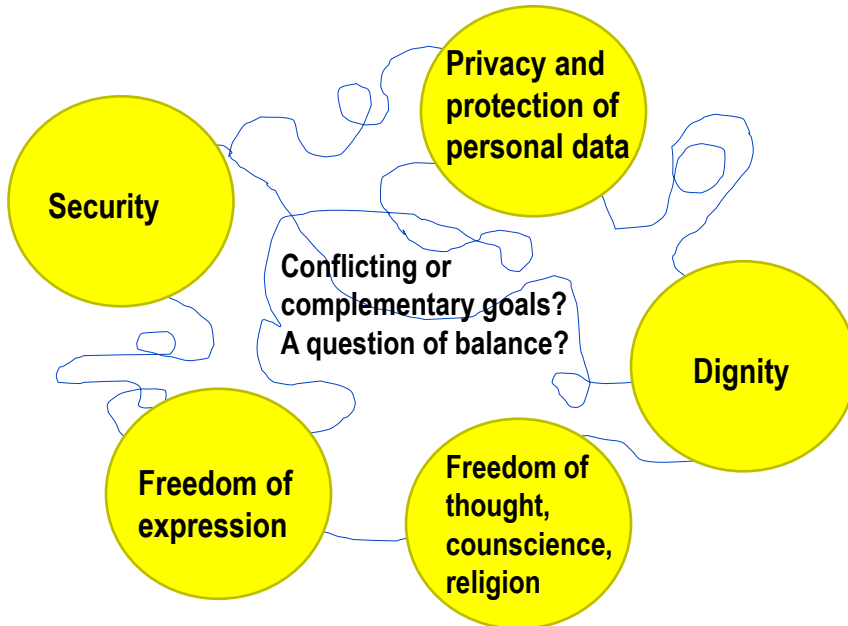
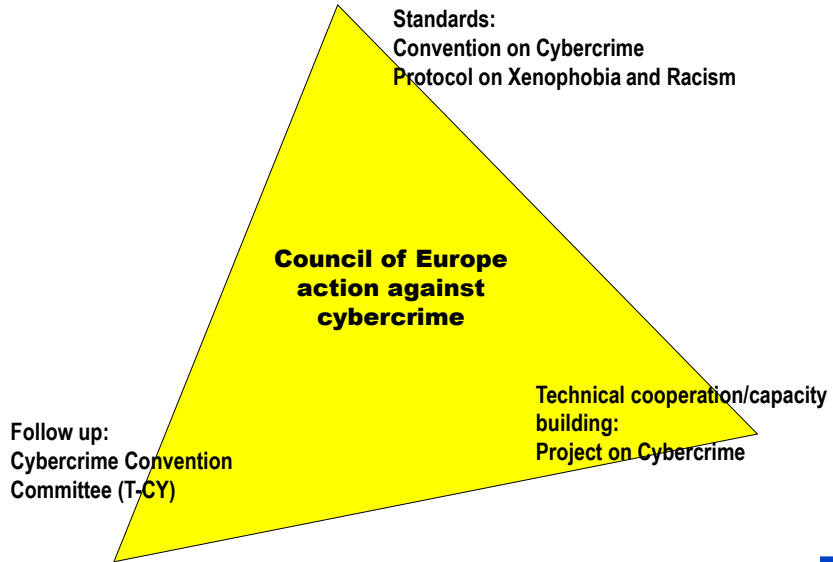
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| Council of Europe | Law enforcement – service provider cooperation |
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2

The approach against cybercrime



Rule of law & human rights standards

- The Convention on Cybercrime
 - Treaties on international cooperation in criminal matters
 - Convention on the protection of children from sexual abuse and exploitation
 - Convention on money laundering and financing of terrorism
 - Convention for prevention of terrorism
 - etc
- European Convention on Human Rights + protocols
 - Convention on the protection of personal data
 - Recommendations
- + Case law of ECHR
+ Monitoring mechanisms
+ Technical cooperation
- + monitoring mechanisms
+ technical cooperation

Guidelines for LEA-ISP cooperation in the investigation of cybercrime (2008)

Human rights guidelines for Internet service providers (2008)

5

LEA-ISP cybercrime guidelines

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

6

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**

7

7

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**
- **Opened for signature in Budapest in November 2001**
 - **Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA**
 - **CCC common standard: used in 100+ countries world wide**

The Protocol on Xenophobia and Racism Committed through Computer Systems

8

8

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

- Council of Europe Project on Cybercrime
- Working group Oct 2007 to March 2008
- Background study

9

9

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
- eBay ELBA (electronic LE request processing system)
- AFA ISP-LEA training
- ECO SpotSpam
- Digital Phishnet
- French Signal Spam project
- MS CETS
- ISP training LEA

10

10

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

11

11

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

Background study/controversies:

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

12

12

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**

13

13

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**

14

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**

15

15

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**

16

16

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**

17

17

Developments:

- **Romanian government decision (Jan 09): judicial, law enforcement, regulatory bodies to make use of guidelines**
- **France: guidelines to be used for LEA-ISP agreement (Spring 2009)**
- **EU JAI Council conclusions (Nov 08): General support to CoE LEA-ISP guidelines + 8 specific ones**
- **Support implementation through Project on Cybercrime and other means (eg workshops in Ukraine and India in Spring 2009)**
- **Expand guidelines to other sectors (financial institutions)?**

18

18

Project on Cybercrime

Supporting countries worldwide in the implementation of the Convention on Cybercrime

- Legislation
- 24/7 points of contact and international cooperation
- Law enforcement – ISP cooperation
- Training judges
- Child protection
- Data protection and privacy
- Multi-stakeholder cooperation

Phase 1 (Sep 2006 – Feb 2009)
Funded by Council of Europe,
Microsoft, Estonia

Phase 2 (Mar 2009 – Jun 2011)
Budget: Euro 1.4 m
To be funded by public and
private sector contributions

Global Octopus Conference
Strasbourg
10-11 March 2009

19

19

What role for the GNI? What cooperation GNI/CoE?

- GNI principles and implementation guidelines and CoE LEA-ISP cybercrime guidelines compatible/complementary
- GNI participation in CoE activities and vice versa?
- CoE/GNI joint workshop at IGF Egypt (Nov 09)
- GNI support to Project on Cybercrime?

20

20



Thank you.

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