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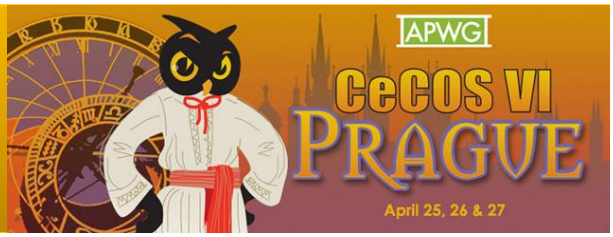
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Weaving a web of responses to cybercrime

The contribution of the Council of the Europe

alexander.seger@coe.int



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Flashback 2008: CECOS II

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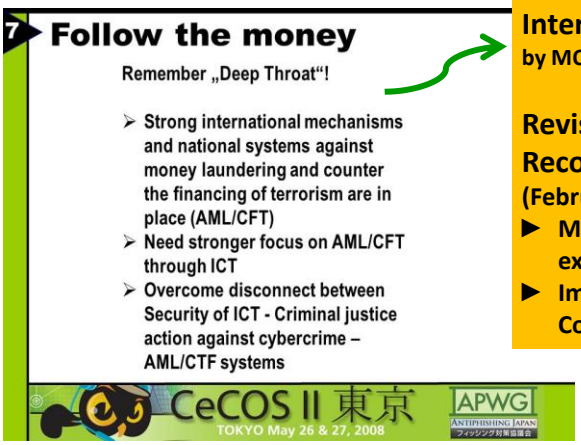
Flashback 2008: CECOS II



Criminal money flows on the Internet: Typology study (Adopted by MONEYVAL March 2012)

Revised FATF 40 Recommendations (February 2012):

- More possibilities for information exchange
- Implementation of Budapest Convention

Bridges between anti-money laundering & financial investigation & anti-cybercrime worlds

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The structure of the Internet

The structure of cybercrime

The structure of the responses to cybercrime

The structure of the Council of Europe response to cybercrime

http://en.wikipedia.org/wiki/File:Internet_map_1024.jpg

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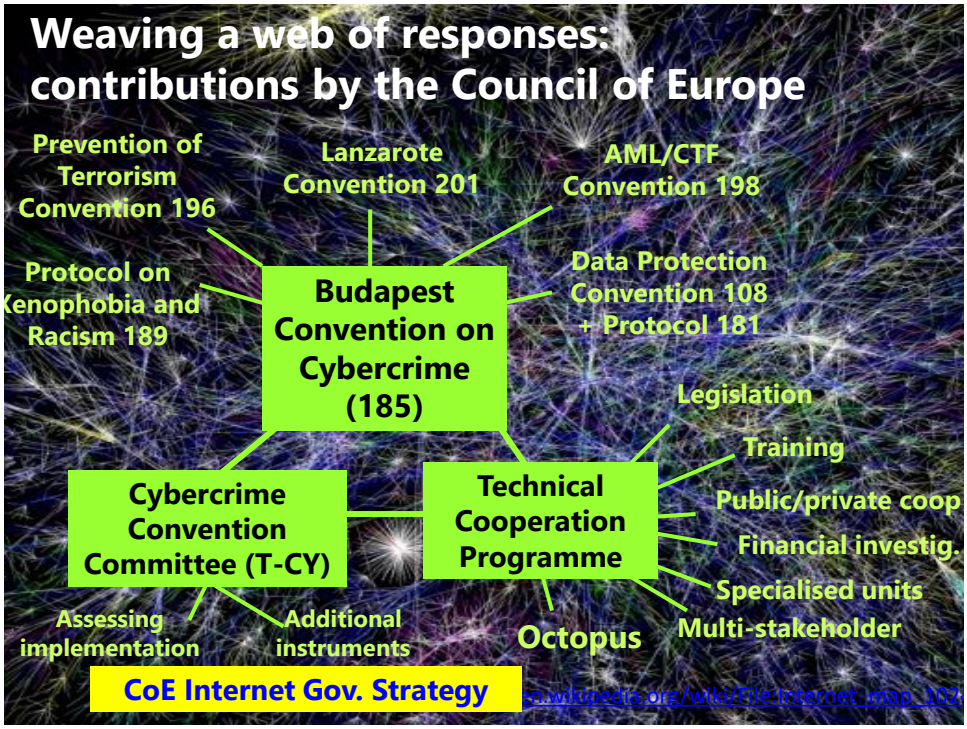

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Cybercrime Convention Committee & Octopus 2012:

Law enforcement transborder access to data and jurisdiction: what issues/options/solutions?

Octopus Conference (Strasbourg, 6-8 June 2012) www.coe.int/octopus2012

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Law enforcement transborder access to data: WHY?

- Increased use of ICT ►Increased offences against and by means of computer data and systems as well as e-evidence related to any crime
- Increasingly international element: offender, victims, evidence in multiple locations/countries
- Existing LEA rules: „data stored on a computer system“. Problem: where is the system, where the data?
- Need for efficient action to secure volatile e-evidence
- Need for effective criminal justice action against criminals
- Effectiveness of traditional MLA procedures limited

► Need for direct LEA transborder access to data

► Need for LEA access to data via ISPs

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Law enforcement transborder access to data: WHAT ISSUES?

- “Principle of territoriality” in international law ►government action on foreign terrority not permitted (national sovereignty) ► No jurisdiction to enforce on foreign territory
- .... unless foreseen in international treaty, international customary law (practice in law of nations) or recognised general legal principles
- Rule of law/due process/human rights principles/data protection/privacy: what rights of suspect and procedural safeguards in cases of transborder access?
- Exigent circumstances? Good faith?
- If LEA and suspect on same territory but data stored abroad ► Intrusion/ perceptible change on foreign territory? Territoriality or power of disposal?
- Access via ISPs: what law applies?
- Hypothesis: LEA transborder access practiced by states

► Need to find common solutions, define common rules

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Law enforcement transborder access to data: Provisions of the Budapest Convention?

- Provisional measures: expedited preservation of data (Art. 16, 17, 29, 30)
- MLA to access stored data (Art. 31)
- Transborder access
  - To publicly available data (Art. 32a)
  - To stored data with consent (Art. 32b)
- MLA to collect traffic and intercept content data (Art. 33, 34)
- 24/7 points of contact (Art. 35)
- Art. 19 (2): Empower LEA to extend search and seizure to computers accessible from the initial system "in its territory"

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Law enforcement transborder access to data: WHAT OPTIONS?

1. Make more effective use of Budapest Convention
   - Increase number of parties
   - Provisions on expedited preservation (Art. 16, 17, 29, 30)
   - Provisions on MLA (Art. 31, 33, 34)
   - 24/7 network of contact points (Art. 35)
2. Transborder access under Budapest Convention
   - Access to/retrieval of publicly available data ► Permitted under Budapest Convention Art. 32a and tolerated state practice[?]
   - Transborder search of systems/data not freely available ► Permitted "with consent" (Art. 32b Budapest Convention)
3. Identify/negotiate additional international rules or principles for transborder access (including conditions and safeguards)
4. Enhance legal certainty for access via ISPs
5. Improve data protection systems (Conv. 108)

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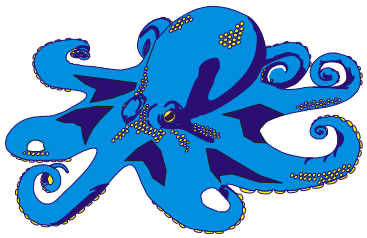
FINDING SOLUTIONS:

Join the discussion at the forthcoming

Octopus Conference!

Octopus Conference
(Strasbourg, 6-8 June 2012)
www.coe.int/octopus2012



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