

Session 4 – Criminal Justice in cyberspace: Solutions

Towards a Protocol to the Budapest Convention

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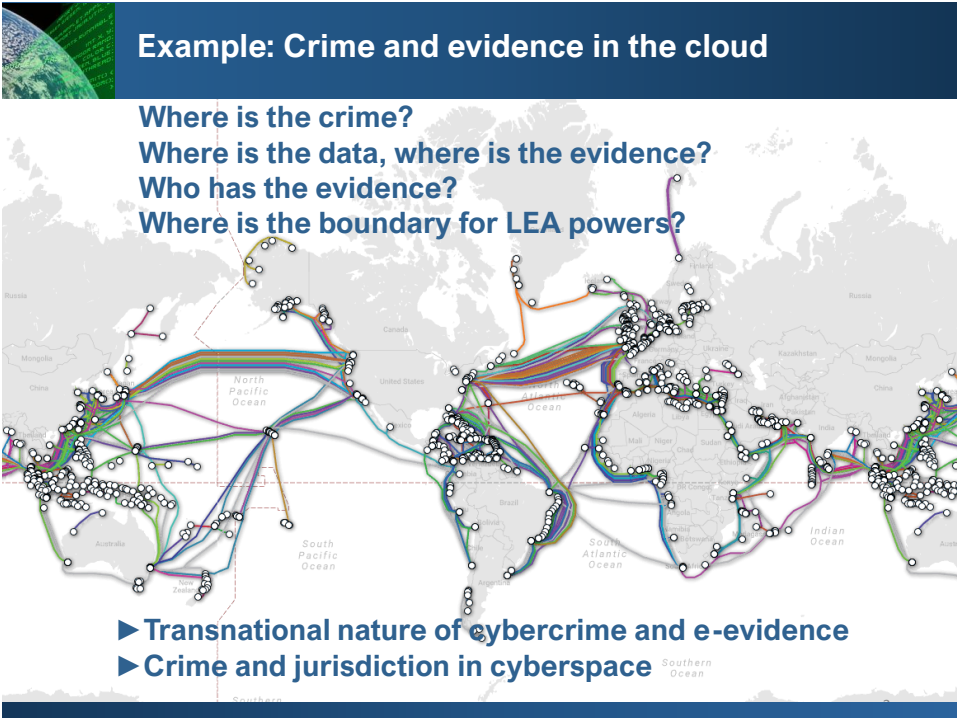
www.coe.int/cybercrime

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- **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 ► what rule of law?**

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Example: Crime and evidence in the cloud

Where is the crime?
 Where is the data, where is the evidence?
 Who has the evidence?
 Where is the boundary for LEA powers?

► Transnational nature of cybercrime and e-evidence
 ► Crime and jurisdiction in cyberspace

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Towards a Protocol: Issues to be addressed

- 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

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Current system of direct requests to providers

<i>Parties and Observers (70 States)</i>	Requests for data directly sent to Apple, Facebook, Google, Microsoft, Twitter and Oath in 2017		
	Received	Disclosure	%
Albania	27	14	53%
Belgium	2 521	2 301	91%
Cabo Verde	40	20	50%
Croatia	196	166	85%
France	29 400	18 466	63%
Germany	35 596	20 172	57%
Mauritius	2	0	0%
Morocco	30	18	59%
Nigeria	7	5	71%
Portugal	3 569	2 394	67%
Senegal	2	0	0%
Turkey	8 618	4 739	55%
United Kingdom	31 954	23 073	72%
Total (excluding USA)	170 680	109 093	64%

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Towards a Protocol: Provisions under negotiation

A. Provisions for more efficient MLA

- Emergency MLA
- Joint investigations
- Video conferencing
- Language of requests
- Etc.

B. Provisions for direct cooperation with providers in other jurisdictions

C. Framework and safeguards for existing practices of extending searches transborder

D. Safeguards/data protection

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Towards a Protocol: Working methods

- **Protocol Drafting Plenary (extension of regular T-CY plenary sessions). E.g.**
 - 2019 Plenaries in July and November
- **Protocol Drafting Group (composed of experts appointed by Parties)**
 - Subgroups working on specific draft provisions between sessions
 - 2019 meetings scheduled for February, March, May, September, October

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Towards a Protocol: Issues

For discussion:

- **Currently 62 Parties: Solutions need to work and provide benefits to all**
- **Direct cooperation with providers in other Parties:**
 - Binding orders or voluntary cooperation?
 - Data protection requirements: Compliance with a legal obligation – Public interest – Legitimate interest?
- **Relationship between negotiation of proposed EU Regulation and Directive on e-evidence and Protocol to Budapest Convention**

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