Implementation of the Budapest Convention on Cybercrime

OAS Meetings of the Ministers of Justice or Attorneys General of the Americas
9th Meeting of the Working Group on Cybercrime, 12-13 Dec 2016, Washington DC
Agenda item “International legal frameworks”

Implementation of the Budapest Convention on Cybercrime

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COE approach 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 Technical cooperation programmes

“Protecting you and your rights in cyberspace”
Reach of the Budapest Convention as a guideline

130+

Budapest Convention
Ratified/acceded: 50
Signed: 5
Invited to accede: 12
= 67

Other States with laws/draft laws largely in line with Budapest Convention = 20

Further States drawing on Budapest Convention for legislation = 45+

Indicative map only
OAS Member States and the Budapest Convention

Parties:
- Canada
- Dominican Republic
- Panama
- USA

Invited to accede:
- Argentina
- Chile
- Colombia
- Costa Rica
- Mexico
- Paraguay
- Peru
Contents of the Budapest Convention

Criminalising conduct
- Illegal access
- Illegal interception
- Data interference
- System interference
- Misuse of devices
- Fraud and forgery
- Child pornography
- IPR-offences

Procedural tools
- Expedited preservation
- Search and seizure
- Interception of computer data

International cooperation
- Extradition
- MLA
- Spontaneous information
- Expedited preservation
- MLA for accessing computer data
- MLA for interception
- 24/7 points of contact

Harmonisation
Cybercrime Convention Committee (T-CY)

Established under Article 46 Budapest Convention

Membership (status December 2016):

- 50 Members (State Parties)
- 17 Observer States

Functions:

- Assessments of the implementation of the Convention by the Parties
- Guidance Notes
- Draft legal instruments
- Etc.

2 x plenaries per year + Bureau and Working Group meetings
### Guidance Notes adopted:

- Notion of “Computer Systems”
- Botnets
- Identity theft
- DDOS attacks
- Critical Infrastructure Attacks
- Malware
- Transborder access to data (Article 32)
- Terrorism

### Guidance Note under negotiation:

- Production order for subscriber information (Article 18)
Crime and jurisdiction in cyberspace ► solutions proposed under the Budapest Convention on Cybercrime

Context:
Budapest Convention on Cybercrime ► Cybercrime Convention Committee (T-CY) ► Cloud Evidence Group ► Recommendations September 2016 ► now under consideration by T-CY

Rationale:
- Cybercrime AND electronic evidence in relation to any crime
- E-evidence on servers in foreign, unknown, multiple or shifting jurisdictions, in the cloud
- No data, no evidence, no prosecution, no justice, no rule of law (in cyberspace)

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
Cybercrime@Octopus (voluntary contribution funded)

GLACY+ EU/COE Joint Project on Global Action on Cybercrime Extended

Cybercrime@EAP II (International cooperation) in Eastern Partnership countries

Cybercrime@EAP III (public/private cooperation)

iPROCEEDS EU/COE Joint Project targeting proceeds from crime online in South-eastern Europe

Managed by:

C-PROC Cybercrime Programme Office of the Council of Europe (Bucharest, Romania)
States invited to accede (Chile, Colombia, Costa Rica, Mexico, Paraguay and Peru) to accelerate process and complete accession.

GLACY+ Project as an opportunity.

Other States to consider accession.

Council of Europe available to review/support domestic legislation.

COE/OAS to cooperate when supporting States.