Council of Europe activities on cybercrime

Jurisdiction to Enforce

The Hague, 16 April 2015

Erik Planken
Chair Cybercrime convention committee
Council of Europe
Budapest Convention
Ratified/acceded: 44
Signed: 9
Invited to accede: 10
= 63

Other States with laws/draft laws largely in line with Budapest Convention = 20
Further States drawing on Budapest Convention for legislation = 43+

125+

Indicative map only
Acting against cybercrime and jurisdiction; transborder access

Part I = 32 (1) B

- Text and scope
- Elements in theory
- Elements in practice

Part II = Actions by T-Cy

- Guidance Notes
- Draft legal instruments
- International cooperation

The T-CY finds a more clear and up to date internationally agreed framework on transborder access desirable

- No impunity; protect victims
- No legal “jungle” with multiple safehavens for criminals
Article 32 (1) B

(1) “A Party may, without the authorisation of another Party:

b. access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.”
Scenario 1

Country A

Law enforcement Country A

National of country A

- Lawful and voluntary consent
- Law authority to disclose the data

Law enforcement Territory B

Territory B
**Elements of 32 (1) B**

**Transborder access between State parties**

<table>
<thead>
<tr>
<th>What is “transborder”, what is “location”?</th>
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<tr>
<td>The person who can provide access?</td>
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<td>... and his or her location?</td>
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<th>What constitutes consent?</th>
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<td>Which law applies?</td>
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The question of transborder access to data

- Guidance Note on Article 32 adopted by T-CY in Dec 2014
- Additional Protocol on transborder access necessary but not (yet) feasible because:
  - Governments divided
  - Reports on mass surveillance
  - Data protection framework still in the making
  - Regulations on criminal justice access unstable following data retention judgment
  - Developments regarding jurisdiction
- Follow up through “Cloud Evidence Group”

“The lack of concern for the rights of victims has been a distressing revelation for the Transborder Group”
Cloud Evidence Group of the T-CY

- Established by T-CY 12 (December 2014)
- Duration: January 2015 – December 2016
- Task: To explore solutions on criminal justice access to evidence stored on servers in the cloud and in foreign jurisdictions, including through mutual legal assistance
- Follow up to T-CY assessment of MLA provisions and work on transborder access to data

T-CY is addressing new and complex challenges in a difficult context