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T-CY (2007) 03

Strasbourg, 15 June 2007

THE CYBERCRIME CONVENTION COMMITTEE (T-CY)

2nd Multilateral Consultation of the Parties

Strasbourg, 13 and 14 June 2007

T-CY mailbox: DG1.cybercrime

T-CY and Project on cybercrime web site: www.coe.int/cybercrime

BRIEF FOREWORD

The T-CY:

- welcomed the widespread international support for the Convention on Cybercrime [ETS No 185], noted with pleasure that, since its last meeting, 9 additional States had become Parties and encouraged other States to become Parties as soon as possible;
- noted that the ratification procedure for the Additional Protocol to the Convention [ETS No 189] was also proceeding in a satisfactory manner;
- recognized the serious technical and legal difficulties in fighting cybercrime and underlined the need to provide more training and legislative assistance;
- considered certain specific matters concerning the provisions of the Convention (corporate liability, spam, phishing, pharming, pin codes, expedited preservation of computer data, terrorist propaganda on the Internet, mutual legal assistance in computer related cases, blocking sites, electronic evidence, jurisdiction, 24/7 network, Commission of the European Communities, extent of cybercrime/statistics);
- underlined the importance of co-operation with the European Committee on Crime Problems (CDPC) and the Committee of experts on the operation of European Conventions in the penal field (PC-OC) and requested them to provide it with practical guidance or information concerning best practices for mutual legal assistance in computer related cases in particular in urgent cases.

REPORT

a) Introduction

1. The Cybercrime Convention Committee (T-CY) met in the Palais de l'Europe, Strasbourg on 13 and 14 June 2007. This meeting took place within the framework of Article 46 of the Convention on Cybercrime [ETS No 185] (hereinafter "the Convention") which provides that "The Parties shall, as appropriate, consult periodically ..." . The meeting was opened by Jan Kleijssen, Director of Standard Setting in the Directorate General of Human Rights and Legal Affairs (DG-HL).

2. The list of participants and the agenda appear in Appendices I and II respectively.

3. Henrik Kaspersen (Netherlands) was re-elected Chair and Betty Shave (United States of America) was re-elected Vice-Chair by the States Party to the Convention.

4. The T-CY welcomed the very positive approach of States to the Convention and underlined the widespread support for the Convention in the different regions of the world.

b) Present situation concerning the Convention on Cybercrime and its Additional Protocol

5. The T-CY noted that the number of Parties was expected to increase significantly in 2008 and 2009. It indicated that many non-European States have also shown considerable interest in the provisions of the Convention and that, at a world level, virtually all new legislation and draft legislation follow closely the provisions of the Convention.

6. The T-CY in particular noted:

- that since its last meeting 9 additional States had become Parties to the Convention. The following 21 States are Parties: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Hungary, Iceland, Latvia, Lithuania, Netherlands, Norway, Romania, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine and the United States of America;
- that the following 22 States have signed the Convention : Austria, Belgium, Canada, Czech Republic, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Malta, Moldova, Montenegro, Poland, Portugal, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, United Kingdom. The representatives of these States in the T-CY indicated that their States fully supported the Convention and the delay in ratification was due to the sometimes lengthy legislative processes. In numerous States these processes were expected to be completed in 2007 with ratification taking place in 2007 or 2008. The T-CY encouraged these States to speed up the ratification process;
- that following their request, Costa Rica and Mexico had been invited to accede to the Convention;
- the information provided by the following States which had not yet signed the Convention: Azerbaijan (will sign at an early date after the finalization of the internal procedure), Monaco (will sign and ratify at the same time) and the Russian Federation (had a positive approach towards the Convention but further consideration would have to be given to Article 32b in particular in the light of experience gained from the use of this Article);
- that all Council of Europe States, which are not already Parties to the Convention, have indicated that they intend to become Parties.

7. The T-CY was informed that outside Europe reforms were taking place for example in Argentina, Brazil, Egypt, India, Nigeria, Pakistan, and the Philippines.

8. The T-CY noted that the Additional Protocol to the Convention on cybercrime concerning the criminalisation of acts of a racist and xenophobia nature committed through computer systems [ETS n° 189] (hereinafter "the Protocol"), has been ratified by 11 States and signed by 20 States. The representatives of numerous States which had signed indicated that their States would ratify the Protocol as soon as the legislative processes had been completed.

9. The T-CY reminded States to provide, before or when becoming Parties to the Convention, all relevant information required under the provisions of the Convention and, in particular, concerning the point of contact for the 24/7 network under Article 35. The T-CY invited States to inform the Council of Europe of any changes concerning contact points (see also paragraphs 17, 28 and 35 below).

10. In addition the T-CY invited participants to send the secretariat translations of the Convention so that these translations could be included on the website and provide assistance to persons and States requiring such translations.

c) The Octopus interface conference "Co-operation against cybercrime"

11. Many T-CY participants had attended the above Conference which took place in Strasbourg on 11 and 12 June 2007. They considered that the Conference had produced much useful information and the T-CY took account of the Conference summary.

12. The T-CY welcomed the country profiles on cybercrime legislation which had been prepared by the Council of Europe and encouraged participants to contribute to the profiles concerning their States. The T-CY also welcomed the work carried out by the Project on cybercrime of the Council of Europe.

d) Co-operation between States, international organisations, academia and the private sector

13. Although the Convention provides a comprehensive legal solution for all States, serious technical problems also have to be considered such as the volume of data to be stored, difficulties to buy and distribute equipment to fight cybercrime, the need to train large numbers of persons and the complexity of many cases.

14. Therefore T-CY underlined the importance of training (police, prosecutors, judges and lawmakers) to fight cybercrime and noted that training could be provided for example by the Project on cybercrime, the European Union, Europol, Interpol, the Organisation of American States (OAS) and POLCYB. In addition a number of States could provide significant training often on a bilateral basis (e.g. Canada, France, United Kingdom, United States).

15. The T-CY noted that the Internet Governance Forum (IGF) would take place from 12 to 15 November 2007 (Rio de Janeiro) and would have workshops dealing with security issues. T-CY participants intending to be present were invited to contact Margaret Killerby (Head of the Law Reform Department, DG-HL) as the Council of Europe planned to hold a workshop on the misuse of the Internet.

16. The T-CY underlined the need to promote public and private partnerships and noted that such partnerships could play an important role in preventing the use of the Internet by terrorists.

17. The desirability of close co-operation between the Council of Europe and the G8 was stressed in particular to ensure proper co-ordination between the contact points for the 24/7 network.

e) European Committee on Crime problems (CDPC)

18. The representative of the CDPC, Branislav Boháčik, informed the T-CY that the CDPC welcomed its close co-operation with the T-CY (see also paragraph 28 below). He indicated that CDPC delegations had referred to the need to encourage States to ratify and implement the Convention as soon as possible and not to consider the preparation of possible amendments to the substantive or procedural provisions until a later stage. He also indicated that the CDPC does not intend at its next meeting to hold a detailed discussion on the provisions of the Convention. However it would examine questions raised by the Octopus Interface Conference, the T-CY meeting as well as other questions related to the communication from the Commission "Towards a general policy on the fight against cyber crime" (see paragraphs 36 to 38 of this report).

f) Specific matters concerning the provisions of the Convention

i. Corporate liability (Article 12), spam, phishing, pharming and pin codes

19. The T-CY considered that the question of corporate liability did not give rise to any specific problems and that the Convention sufficiently covered spam, phishing and pharming.

20. The T-CY agreed that pin codes for electronic use were computer data when input into a computer device and so covered by the definition of computer data under paragraph b of Article 1.

ii. Expedited preservation of computer data (Articles 16 and 17)

21. The T-CY recognized that the requirement in paragraph 2 of Article 16 to preserve computer data for up to 90 days could be insufficient in certain cases. However it was clear that States could, if they wished, extend the period for the preservation of data.

22. The T-CY agreed that the EU Directive on the retention of data (2006/24/EC), which provides for the retention of data for a longer period, was useful especially for international investigations.

23. The T-CY noted that Articles 16 and 17 only apply to data preservation and not to data retention (see paragraphs 151 and 152 of the Explanatory Report to the Convention).

24. Participants were requested to provide information concerning the expedited disclosure of data and related privacy issues.

25. The T-CY was informed that in the United States, in urgent cases where persons were in serious danger, ISPs could be requested to disclose data immediately, without judicial process.

iii. Terrorist propaganda on the Internet

26. The T-CY recognized that the Convention does not specifically refer to terrorist issues and many participants considered that there was no need to have specific provisions in the Convention related to these issues.

27. Participants were requested to provide further information on this matter.

iv. Mutual legal assistance in computer related cases

28. The T-CY agreed that mutual legal assistance could in some computer related cases take too long and so risk losing essential evidence. Therefore the T-CY requested the CDPC and the PC-OC to provide it with practical guidance or information concerning best practices for mutual legal assistance in computer related cases in particular in urgent cases. The T-CY wondered whether special procedures would be more appropriate in such cases and noted that in urgent cases the 24/7 network could often provide assistance.

v. Blocking sites

29. The T-CY recognized the legal difficulties which could arise when attempting to block certain sites with illegal contents. Questions concerning the extent of the blocking of the site and the liability of the ISPs need further consideration.

vi. Electronic evidence (Article 14)

30. As regards the authenticity of electronic evidence, the T-CY considered that States should ensure that they have legal provisions to safeguard the integrity and reliability of such evidence.

vii. Trans-border access to stored computer data with consent (Article 32b)

31. Participants were requested to provide further information concerning Article 32b.

vii. Jurisdiction (Article 22)

32. The T-CY noted that, up to the present time, problems concerning international jurisdiction had not arisen and there had been good co-operation between States when two or more States had jurisdiction.

33. However the T-CY noted that there could be problems in obtaining international co-operation in cases where cybercrime was considered to be insufficiently serious to take action. The T-CY underlined that it was also important for States to deal with questions of domestic jurisdiction where more than one domestic jurisdiction could be responsible for the case or certain parts of the case.

34. The T-CY noted that sometimes it could be very difficult to locate servers and identify the owners of the servers. Delay in locating servers could prevent law enforcement from taking action in sufficient time. The T-CY agreed to consider this matter at its next meeting.

viii. 24/7 Network (Article 35)

35. The T-CY reminded States that they did not have to be a Party to the Convention in order to participate in the 24/7 network.

g. Commission of the European Communities

36. The T-CY welcomed the Communication from the Commission to the European Parliament, the Council and the Committee of the regions on "Towards a general policy on the fight against cybercrime (COM(2007)267 final) and took note of the accompanying impact assessment report (SEC(2007)642).

37. The T-CY noted that the Communication recognizes that "Arguably, the predominant European and international instrument in this field is the Council of Europe's 2001

Convention on cyber crime". The Communication refers to the following action to be supported through the Commission's Financial Programme "Prevention of and fight against Crime": "Take concrete action to encourage all Member States and relevant third countries to ratify the Council of Europe's Cyber Crime Convention and its additional protocol and consider the possibility for the Community to become a party to the Convention." (see t-CY(2007)02, page 12 and see also page 8 for similar wording).

38. The T-CY underlined that there was no need for a new instrument on cybercrime and that the Convention should be fully implemented. It noted that the Commission will consider the question of identity theft.

39. The T-CY looked forward to co-operating with the Commission and welcomed its interest in considering the possibility for the European Community to become a Party to the Convention.

h. Extent of cybercrime/statistics

40. The T-CY recognized the importance of ascertaining the extent of cybercrime and the likely areas of growth in the future. Such information enabled States to plan for the future in particular concerning the necessary human and financial resources. Such information was essential in order to take sufficient steps to deal with serious crime on the Internet.

41. The T-CY requested participants to provide, for its next meeting, general information on the extent of cybercrime, the likely trends especially concerning serious crime and any available statistics. Of particular interest would be information from the G8, the European Commission, Europol and Interpol

i) Next meeting of the cybercrime Convention Committee (T-CY)

42. The T-CY agreed to hold its next meeting in 2008, if possible, immediately following a Council of Europe Conference on Cybercrime.

43. The T-CY agreed to include, in particular, the following items on its agenda:

- a. state of signatures, ratifications and accession to the Convention and its additional Protocol (including progress made and likely future timetable)
- b. consideration of the replies of the Parties to questions concerning the practical implementation of the Convention (questionnaire to be sent by the Secretariat to the Parties)
- c. Consideration of specific difficulties arising out of international co-operation:
 - between the Parties
 - between Parties and other States
- d. mutual legal assistance in computer related cases in particular in urgent cases in the light of information provided by the CDPC/PC-OC (see paragraph 18 above)
- e. difficulties to ascertain the location of servers and owners (see paragraph 34 above)
- f. common rules for ISPs and their relations with law enforcement (see paragraph 16 above)
- g. available training (by international bodies or by States) (see paragraph 14 above)
- h. examples of public and private partnerships (e.g. blocking of sites, disclosure of data and privacy) (see paragraph 29 above)
- i. time limits on the preservation of computer data (see paragraph 21 above)
- j. statistics and reports from international bodies or States (see paragraphs 40 and 41 above).

44. The T-CY agreed to invite to its next meeting:

- a) the Parties to the Convention
- b) all States which have signed the Convention
- c) other Council of Europe member and observer States
- d) representatives from the Parliamentary Assembly of the Council of Europe, the European Committee of Crime Problems (CDPC) and the Steering Committee of the Media and New Communications Services (CDMC)
- e) the following bodies:

the European Network and Information Security Agency (ENISA),
the European Union (European Commission and Council of the European Union,
Europol),
Interpol,
the International Telecommunication Union (ITU),
the Organisation for Security and Co-operation in Europe (OSCE),
the United Nations Office on Drugs and Crime (UNODC).

APPENDIX I

LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

PARTICIPATING PARTIES TO THE CONVENTION ON CYBERCRIME PARTIES PARTICIPANT A LA CONVENTION SUR LA CYBERCRIMINALITE
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ALBANIA / ALBANIE

Idajet FASKAJ - *Apologised*

ARMENIA / ARMENIE

Armen SANOYAN, Ministry of Justice, YEREVAN, Armenia

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Andreja ELZNER, andreja.elzner@msb.gov.ba - *Apologised*

BULGARIA / BULGARIE

Milena PETKOVA, Ministry of Justice, Bulgaria

Ilona TOMOVA, Ministry of Interior, Bulgaria

CROATIA / CROATIE

Ognjen HARAMINA, Ministry of the Interior, Croatia

ESTONIA / ESTONIE

Markko KÜNNAPU, Ministry of Justice, Estonia

FRANCE

Christian AGHROUM, Central Office for Fight Against Crime related to cybercrime, France

Colonel Joël FERRY, Ministère de la Justice, France

HUNGARY / HONGRIE

Eszter VICZKÓ, Ministry of Justice, Hungary

Zsolt SZABOLCSI, Hungary – *Apologised*

LITHUANIA / LITUANIE

Arvydas BIVILIS, Lithuanian Criminal Police Bureau, Lithuania - *Apologised*

NETHERLANDS / PAYS-BAS

Henrik W. K. KASPERSEN, **Chair of the Committee**, Law Institute, The Netherlands

August NIELAND, Ministry of Justice, The Netherlands

NORWAY / NORVEGE

Magnar AUKRUST, Ministry of Justice, Norway

Eirik TRONNES HANSEN, National Criminal Investigation Service, Norway

ROMANIA / ROUMANIE

Cristina SCHULMAN, Ministry of Justice, BUCHAREST

Daniela MATEI, The Prosecutor's Office of the High Court of Cassation and Justice of Romania, BUCHAREST

UKRAINE

Andrii FIALKOVSKIY, National Security Council, Ukraine

Dmytro VOLOSHENKOV, Ukraine – *Apologised*

UNITED STATES OF AMERICA / ETATS-UNIS D'AMÉRIQUE

Betty SHAVE, **Vice-Chair of the Committee**, US Department of Justice, United States of America

Gary L. DAGAN – *Apologised*

OTHER PARTICIPANTS / AUTRES PARTICIPANTS

AUSTRIA / AUTRICHE

Bernhard WERATSCHNIG, Federal Ministry of Justice, Austria

AZERBAÏJAN / AZERBAIDJAN

Bakhtiyar N. MAMMADOV, Ministry of Communications and information technologies, Azerbaijan

CANADA

Gareth SANSOM, Department of Justice, Canada

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Teddy SUNARDI, Computer Crime Unit, Czech Republic – *Apologised*

GERMANY / ALLEMAGNE

Matthias KORTE, Federal Ministry of Justiz, Germany

Malte MERZ, Bundesministerium der Justiz, Germany

GREECE / GRECE

Apologised / Excusé

ITALY / ITALIE

Vittorio STANCA, Servizio Polizia Postale e delle Comunicazioni, Italy - *Apologised*

JAPAN / JAPON

Rieko MOTOUCHI, Ministry of Foreign Affairs, Japan

Yasushi FUKU, Consulate-General of Japan, France

LIECHTENSTEIN

Katja GEY, Bureau pour les Affaires Etrangères, Liechtenstein - *Apologised*

MEXICO / MEXIQUE

Rodrigo LABARDINI, Ministry of Foreign Affairs, Mexico

Guillermo VALLS, Mexico's General Attorney Office, Spain

MOLDOVA

Vitalie GRABOVSKI, Ministry of Interior, Moldova

Viorel MORARI, Anticorruption Public Prosecutor's Office, Moldova

MONACO

Lionel MINICONI, Direction de la sûreté publique, MONACO

Cindy FILIPPI, Département des Affaires Internationales, MONACO

PORTUGAL

Pedro VERDELHO, Centre for Judicial Studies, Portugal

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Vladimir ANDREYEV, Ministry of Foreign Affairs, Russian Federation

Valentin MIKHAYLOV, Office of the President of the Russian Federation, Russian Federation

Boris MIROSHNIKOV, Ministry of Interior, Russian Federation

Alexander GERMOGENOV, Chief of Division, Russian Federation

Sergey S. BELOUSKO, Ministry of Foreign Affairs, , Russian Federation

SERBIA / SERBIE

Vladimir DAVIDOVIC, Ministry of Justice, Serbia – *Apologised*

Sasa ZIVANOVIC, Ministry of Interior, Serbia - *Apologised*

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Miroslav TIŽA, The General Prosecutor's Office, Slovak Republic

SPAIN / ESPAGNE

Alfonso DE MIGUEL YANES, Spanish Guardia Civil, Spain – *Apologised*

SWITZERLAND / SUISSE

Christine MAGNIN, Federal Office of Justice, Switzerland

UNITED KINGDOM / ROYAUME-UNI

Justin MILLAR, Home Office, United Kingdom

EUROPEAN COMMITTEE ON CRIME PROBLEMS / COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS (CDPC)

Branislav BOHÁČIK, Ministry of Justice, Slovak Republic

STEERING COMMITTEE ON THE MEDIA AND NEW COMMUNICATION SERVICES / COMITE DIRECTEUR SUR LES MEDIAS ET LES NOUVEAUX SERVICES DE COMMUNICATION (CDMC)

Frédéric RIEHL, Office Fédéral de la Communication, Switzerland

Lee HIBBARD, Council of Europe, France

ENISA

Mathea FAMMELS, ENISA - European Network and Information Security Agency, Greece – *Apologised*

INTERPOL

Santiago TELLADO GONZALEZ, OIPC – INTERPOL, France

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) / OFFICE CONTRE LA DROGUE ET LE CRIME (UNODC)

Gillian MURRAY, United Nations Office on Drugs and Crime, Austria - *Apologised*

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Michael CARLIN - *Apologised*

EUROPOL

Nicola DILEONE, Europol, The Netherlands

**SECRETARIAT OF THE COUNCIL OF EUROPE
SECRETARIAT DU CONSEIL DE L'EUROPE**

Council of Europe - Directorate General of Human Rights and Legal affairs / Conseil de l'Europe / Direction des droits de l'Homme et des affaires juridiques

Jan KLEIJSSSEN, Council of Europe, France

Margaret KILLERBY, Council of Europe, France, **Secretary to the T-CY**

Alexander SEGER, Council of Europe, France

Jean-Charles de CORDES, Council of Europe, France

Dominique WULFRAN, Council of Europe, France

INTERPRETERS / INTERPRETES

Sally BAILEY, chef d'équipe

Chloé CHENETIER

Julia TANNER

APPENDIX II

AGENDA

1. Opening of the meeting

Working documents:

- Information document concerning the T-CY: T-CY(2007) 01 rev
- Report of the first meeting of the Cybercrime Convention Committee, T-CY(2006)11

2. Election of the Chair and Vice-Chair by representatives of States Party to the Convention

3. Adoption of the agenda

4. Exchange of views on the present situation concerning the Convention on Cybercrime (ETS No. 185) and its Protocol (ETS No. 189)

- state of signatures and ratification
- translations available
- legislation and practices in States which are Parties to this Convention /

Working documents

- The Convention on Cybercrime and its explanatory report
- The Protocol to the Convention and its explanatory report
- Report of the first meeting of the Cybercrime Convention Committee, T-CY(2006)11, see paragraphs 4 to 8, 22, 26

5. Information concerning the Octopus Interface Conference « Co-operation Against Cybercrime », 11 – 12 June 2007

6. Exchange of views on co-operation between States, international organisations, academia and the private sector

Working documents

- Report of the first meeting of the Cybercrime Convention Committee, T-CY(2006)11, see paragraphs 17 to 21 and 27
- *Cybercrime and the European Union, T-CY(2007)02*

7. Questions and comments on certain specific matters or provisions of the Convention and its Protocols and their effectiveness

Working documents

- Report of the first meeting of the Cybercrime Convention Committee, T-CY(2006)11, see paragraphs 13 to 16, 25, 28
- Comments concerning provisions of the Convention on Cybercrime (ETS No. 185)
- Other work carried out in the Council of Europe concerning specific matters relating to cybercrime

8. Extent of cybercrime

- a) Statistics
- b) Co-ordination at a national level

9. Any other business

10. Next meeting of the Cybercrime Convention Committee (T-CY)

11. Adoption of the abridged meeting report