

# Cyber crime: Trends and Responses

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# The Program

- Some observations on the Implementation of the Convention 185 (189)
  - Substantive law
  - Procedural law
  - International co-operation
- Trends in the field of Cybercrime
  - Crime
  - Technology
- Concluding Observations

# Implementation of the Cybercrime Convention

- Some observations on the basis of the profiles:  
Substantive law provisions
  - Method of Implementation
  - Reservations
  - Use of declarations
  - Need for new criminalisations?

# Method of Implementation

- Legislative Approaches around the Cybercrime Convention
  - Ongoing adaptation of domestic law
    - Implementation of CoE not simple, time consuming, tendency to maintain as close as possible to national solutions, poor implementation of “new provisions
  - In the past Cybercrime not experienced as a big problem
    - Room for radical adaptations
  - In between category
    - Solutions depending from the subject
- Model law approach vs transformation

# Reservations (over 21 Parties)

- Concerning:

- Art. 4, para 2 (iii)
- Art. 6, para 1ai (iii)
- Art. 6, para 1aii
- Art. 6, para 1b
- Art. 9, para 1d , 1e
- Art. 9, para 1e
- Art. 9, para 2b (v)
- Art. 9, para 2c
- Art. 10, para 1 and 2
- Art. 11, para 3
- Art. 14, para 3 (iii)
- Art. 22, para 1b, 1c, d
- Art. 22, para 2 (ii)
- Art. 29, para 4 (iv)
- Art. 41, para 1

In Total: No Reservation Possibility  
unused

# Declarations

Substantive law

- Art. 2 (security measures)
- Art. 2 (obtaining data)
- Art. 2 (both elements, and dishonest intent)

# Implementation, cont'd

- Some observations on procedural law
  - Method of Implementation
  - Reservations
  - Use of declarations

# Implementation of procedural issues

- Implementation method:
  - Tendency to include in present powers
  - Preliminary measures complex to implement
  - Search and seizure
    - Art. 18
    - Art. 20/21



# Implementation, cont'd

- Reservations: none
- Declarations: only concerning Central authorities, 24/7 contact points, territorial application, and extradition

# Implementation, cont'd

Other questions, on mutual assistance and procedural law issues

- Experiences: expedited? Adequate?
- Dual criminality requirement
- Co-operation with non-Parties

Co-operation with NGO's and private sector

???

# Trends in Crime

- Cyber crime
  - From single cyber crimes to complex criminal schemes
  - From internet vandalism to organised crime
    - E.g. Phishing, Vishing, Smishing, Scarving
      - Purpose: fraud, theft
      - Modus: spamming, pharming, identity theft
      - Further criminalisations?
    - E.g. Grooming and on-line child abuse
      - Purpose: direct or indirect illegal sexual contact or exposure
      - Modus: Chat, e-mail, recording images
      - Further criminalisations?
    - E.g. Spam
      - Purpose: circumvent privacy regulation
      - Modus: Botnets
      - Further criminalisations?

# Trends in technology

- Multifunctionality and mobility of devices
  - lap top, palm top, mobile phone
  - Direct interconnection (peer-to-peer, blue tooth)
    - ▶▶ Broadening the scope of Cyber Crime
- Integration of telecommunication and internet
  - Mobile internet, VoIP
  - Multiple choice of providers
    - ▶▶ Increasing the problem to identify suspect's communications and availability of traffic data

# The problem of substantive law

- Extent the scope of the Convention beyond the “basic” cyber crimes as presently defined?
  - Diminish number of Reservations and Declarations
    - Art. 6, art. 9, art. 10
  - Consider Supplementation
    - Spam, identity theft, espionage
    - Role and responsibility ISP’s

# The problem of procedural law

- New powers?
  - Blocking internet traffic and removing websites
  - Mandatory retention of traffic data
    - Definition of traffic data adequate?
  - Conditions and safeguards
  - Is cryptography really a problem?

# International jurisdiction

- Some problems are still on the table, and should be solved
- Art. 32 and international public law
  - Data available “at random”: yet only through mutual assistance?
  - Difficulties in establishing the jurisdiction of the server concerned: lawfulness of the search

# Concluding observations

- Implementation substantive part, so far
    - All reservations used at least one time
    - Moderate use of declarations
    - Art. 9 less harmonised result, art. 6 second best
    - Art. 22 some restrictive approaches
- Common evaluation of implementation needed



# Concluding observations II

- Procedural part and international co-operation
  - Art 16 and 17 unusual
  - Moderate use of reservations
  - Supplementation of powers desirable
  - Little practical experience, except for 24/7
- ▶▶ Common evaluation of implementation needed

# Final Observation

What can we learn from:

*Odysseus and Argos*

Octopus, Strasbourg April 1-2, 2008