



Economic Crime Division
Directorate General of
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**Guidelines for the
cooperation between
law enforcement and
internet service providers
against cybercrime**

Adopted by the global Conference
Cooperation against Cybercrime
Council of Europe, Strasbourg, 1-2 April 2008

These guidelines are the result of several rounds of discussions with representatives from industry and law enforcement who met between October 2007 and February 2008 under the auspices of the Council of Europe's Project on Cybercrime. They are complemented by a detailed background study.

The guidelines were further discussed and adopted by the global Conference "Cooperation against Cybercrime" (Council of Europe, Strasbourg, France) on 1-2 April 2008.

The guidelines are a non-binding tool that can now be disseminated and used to help law enforcement and service providers in any country around the world to organise their cooperation against cybercrime while respecting each others' roles and responsibilities as well as the rights of internet users.

Guidelines for the cooperation between law enforcement and internet service providers against cybercrime¹

Introduction

1. Building an information society requires the strengthening of trust in information and communications technologies (ICT's), the protection of personal data and privacy, and the promotion of a global culture of cyber-security in a context where societies worldwide are increasingly dependent on ICT and thus vulnerable to cybercrime;

2. The First and Second World Summit on the Information Society (Geneva 2003, Tunis 2005) – among other things – committed to build an inclusive information society where everyone can create, access, utilize and share information and knowledge, achieve their potential and improve their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights, and which calls for new forms of partnerships and cooperation among governments, the private sector, civil society and international organisations;

3. Internet service providers (ISP) and law enforcement authorities (LEA) play a crucial role in the realization of this vision;

4. National legislation in line with the Convention on Cybercrime of the Council of Europe (the "Budapest Convention") helps countries create a sound legal basis for public-private cooperation, investigative powers as well as international cooperation;

5. The guidelines are not intending to substitute existing legal instrument but assume adequate legal instruments exist that provide a well balanced system of investigation instruments as well as related safeguards and a protection of fundamental human rights such as freedom of expression, the respect for private life, home and correspondence and the right to data protection. It is therefore recommended that states adopt regulations in their national law in order to fully implement the procedural provisions of the Convention on Cybercrime, and to define investigative authorities and obligations of law enforcement while putting in place conditions and safeguards as foreseen in Article 15 of the Convention. This will

- ensure efficient work of law enforcement authorities
- protect the ability of Internet service providers to provide services
- ensure that national regulations are in line with global standards
- promote global standards instead of isolated national solutions
- help ensure due process and the rule of law, including principles of legality, proportionality and necessity;

6. For the purposes of these guidelines we use the definition of service provider included in the Convention on Cybercrime in Article 1 which defines "service provider" in a broad manner as meaning:

- i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
- ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;

¹ This document does not necessarily reflect official positions of the Council of Europe. For further information please contact Alexander.seger@coe.int

7. In order to enhance cybersecurity, minimise use of services for illegal purposes and build trust in ICT, it is essential that Internet service providers and law enforcement authorities cooperate with each other in an efficient manner with due consideration to their respective roles, the cost of such cooperation and the rights of citizens;

8. The purpose of the present guidelines is to help law enforcement authorities and Internet service providers structure their interactions in relation to cybercrime issues. They are based on existing good practices and should be applicable in any country around the world in accordance with national legislation and respect for the freedom of expression, privacy, the protection of personal data and other fundamental rights of citizens;

9. It is therefore recommended that States, law enforcement authorities and Internet service providers undertake the following measures at a national level:

Common guidelines

10. Law enforcement authorities and Internet service providers should be encouraged to engage in information exchange to strengthen their capacity to identify and combat emerging types of cybercrime. Law enforcement authorities should be encouraged to inform service providers about cybercrime trends;

11. Law enforcement and Internet service providers should promote a culture of cooperation – rather than confrontation - including the sharing of good practices. Regular meetings in order to exchange experience and resolve problems are encouraged;

12. Law enforcement and service providers should be encouraged to develop written procedures for cooperation with each other. Where possible, both parties should be encouraged to provide structured feedback on the operation of these procedures to each other;

13. Formal partnerships between law enforcement and service providers should be considered in order to establish longer-term relationships with proper guarantees for both sides that the partnership will not infringe any legal rights on the side of the industry or interfere with any legal powers on the side of law enforcement;

14. Both law enforcement authorities and Internet service providers should protect the fundamental rights of citizens according to United Nations and other applicable European and international standards such as the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data as well as domestic law. This places reasonable limits to the level of cooperation possible;

15. Law enforcement authorities and Internet service providers are encouraged to cooperate with each other in view of enforcing privacy and data protection standards at the domestic level but also with regard to cross-border data flows. The work of the Council of Europe and the OECD provides guidance in this respect;

16. Both sides should be mindful of the costs involved in creating and responding to requests. Procedures should be developed with consideration of the financial impact of these activities and issues of cost reimbursement or fair compensation to relevant parties should be considered.

Measures to be taken by law enforcement

17. Broad and strategic cooperation – Law enforcement should be encouraged to assist service providers by engaging in a broad and strategic cooperation with industry that would include conducting regular technical and legal training seminars, as well as providing feedback on investigations conducted based on complaints filed by service providers or on the intelligence gathered based on known criminal activity reported by the service providers;
18. Procedures for legally binding requests – Law enforcement should be encouraged to prepare written procedures, which include appropriate due diligence measures, for the issuing and processing of legally binding requests, and ensure that requests are carried out pursuant to the agreed procedures;
19. Training – Law enforcement should be encouraged to provide training to a designated set of their personnel on how to implement these procedures, including the manner in which records may be obtained from service providers and how to process information received, but also on internet technologies and their impact in general as well on how to respect due process and the fundamental rights of individuals;
20. Technical resources – Law enforcement personnel responsible for cooperation with service providers should equip themselves with the necessary technical resources, including internet access, an agency-issued email address that makes the affiliated agency apparent in the address, and other technical resources to permit them to receive information securely from a service provider electronically;
21. Designated personnel and contact points – Interaction between law enforcement and service providers should be limited to trained personnel. Law enforcement should be encouraged to designate contact points for their cooperation with service providers;
22. Authority for requests – Law enforcement authorities should be encouraged to define clearly in their written procedures which law enforcement personnel can authorise what type of measures and requests to Internet service providers and how these requests can be validated/authenticated by Internet service providers;
23. Law enforcement should be encouraged to make information available to Internet service providers on their procedures and, where possible, which personnel or which nominated job positions are responsible for cooperation with Internet service providers;
24. Verification of source of request – The source of a request from law enforcement should be verifiable by service providers:
 - All correspondence should include the contact name, telephone number and e-mail address of the law enforcement agent(s) seeking the records so that the service provider can contact the requesting individual if issues arise
 - service providers should not be asked to correspond with an agent through the agent's personal e-mail address, but rather through an appropriate agency-provided e-mail account
 - all letters should be on department letterhead, and all correspondence should include the agency's main switchboard number and website address so that service providers can take steps to verify the authenticity of requests if deemed appropriate;
25. Requests – Requests from law enforcement to service providers should be made in writing (or other legally acceptable electronic method) and leave a documentary trail. In extremely urgent cases when oral requests are acceptable, they must be immediately followed up by written (or other legally acceptable electronic method) documentation;

26. Standard request format – At the national level, and if possible internationally, law enforcement should be encouraged to standardise and structure the format used for sending requests and for responding to requests. As a minimum requests should contain the following information:

- Registration number
- Reference to legal basis
- The specific data requested
- Information to verify the source of the request;

27. Specificity and accuracy of requests – Law enforcement should be encouraged to ensure that requests sent are specific, complete and clear, and provide a sufficient level of detail to allow service providers to identify relevant data. They should be encouraged to ensure that requests are sent to the service provider that has the records. Requests for multiple and unspecified data should be avoided;

28. Law enforcement should be encouraged to provide as many facts about the investigation as possible without prejudicing the investigation or any fundamental rights in order to enable service providers to identify relevant data;

29. Law enforcement should be encouraged to provide explanations and assistance to service providers regarding non-case-related investigation techniques in order for them to understand how their cooperation will result in more efficient investigations against crime and better protection for citizens;

30. Prioritisation – Law enforcement should be encouraged to prioritise requests, especially those related to large volumes of data, to enable service providers to address the most important ones first. Prioritization is best done in a consistent manner across national law enforcement authorities and if possible internationally;

31. Appropriateness of requests – Law enforcement should be encouraged to be mindful of the cost that requests entail for service providers and give service providers sufficient response time. They should be mindful that service providers may also need to respond to requests from other law enforcement authorities, and should be encouraged to carefully monitor volumes submitted;

32. Confidentiality of data – Law enforcement should ensure the confidentiality of data received;

33. Avoid unnecessary cost and disruption of business operations – Law enforcement should be encouraged to avoid unnecessary cost and disruption of business operations of the service providers and other types of business;

34. Law enforcement should be encouraged to restrict the use of emergency contact points service to extremely urgent cases only to ensure this service is not abused;

35. Law enforcement should be encouraged to ensure that preservation orders and other provisional measures are followed up in a timely manner by disclosure orders, or the Internet service provider is informed in a timely manner that preserved data is no longer required;

36. International requests – For requests addressed to non-domestic Internet service providers, domestic law enforcement authorities should be encouraged not to direct requests directly to non-domestic Internet service providers but make use of procedures as described

in international treaties, such as the Convention on Cybercrime and the network of 24/7 law enforcement points-of-contact for urgent measures, including preservation orders/requests;

37. Requests for international mutual legal assistance – Law enforcement and criminal justice authorities should be encouraged to take the necessary steps to ensure that requests for provisional measures are followed by international procedures for mutual legal assistance, or the Internet service provider is informed in a timely manner that preserved data is no longer required;

38. Coordination among law enforcement agencies – law enforcement authorities should be encouraged to coordinate their cooperation with Internet service providers and share good practices among each other nationally and internationally. Internationally they should make use of relevant international representative bodies for that purpose;

39. Criminal compliance programmes – Law enforcement should be encouraged to organise their interactions outlined above with service providers in the form of a comprehensive criminal compliance programme, and provide a description of such programme to service providers, including:

- The information necessary to contact the law enforcement designated criminal compliance personnel, as well as the hours during which such personnel are available
- The information necessary for service provider to be able to provide documents to the criminal compliance personnel
- Other particulars specific to the law enforcement criminal compliance personnel (such as the extent that a law enforcement co-operates with multiple countries, documents to be translated into a particular language etc.);

40. Audit of the compliance system – Law enforcement authorities should be encouraged to track and audit the system of processing requests for statistical purposes, for identifying strengths and weaknesses and publish such results if appropriate;

Measures to be taken by service providers

41. Cooperation to minimize use of services for illegal purposes– Subject to applicable rights and freedoms, such as freedom of expression, privacy and other national or international laws, as well as user agreements, service providers should be encouraged to cooperate with law enforcement to help minimize the extent to which services are used for criminal activity as defined by law;

42. Service providers should be encouraged to report criminal incidents affecting the Internet service provider of which he is aware of to law enforcement. This does not oblige service providers to actively search for facts or circumstances indicating illegal activities;

43. Service providers should be encouraged to assist law enforcement with education, training and other support on their services and operations.

44. Follow up to requests from law enforcement authorities – Service providers should be encouraged to undertake all reasonable efforts to assist law enforcement in executing the request;

45. Procedures for responding to requests – Service providers should be encouraged to prepare written procedures, which include appropriate due diligence measures, for the processing of requests, and ensure that requests are followed up to pursuant to the agreed procedures;

46. Training - Service providers should be encouraged to make sure that sufficient training is provided to their personnel responsible for implementing these procedures;
47. Designated personnel and contact points – Service providers should be encouraged to designate trained personnel as contact points for cooperation with law enforcement;
48. Emergency assistance – Service providers should be encouraged to establish a means by which law enforcement may reach their criminal compliance personnel outside of normal business hours to address emergency situations. Service providers should be encouraged to provide law enforcement with relevant information for emergency assistance;
49. Resources – Service providers should be encouraged to provide contact points or personnel responsible for cooperation with law enforcement with the resources necessary to enable them to comply with requests from law enforcement;
50. Criminal compliance programmes – Service providers should be encouraged to organise their cooperation with law enforcement in the form of comprehensive criminal compliance programmes, and provide a description of such programmes to law enforcement, including:
- The information necessary to contact the providers' designated criminal compliance personnel, as well as the hours during which such personnel are available
 - The information necessary for law enforcement to be able to provide documents to the criminal compliance personnel
 - Other particulars specific to the providers' criminal compliance personnel (such as the extent that a service provider operates in multiple countries, documents to be translated into a particular language etc.);
 - In order to allow law enforcement to make specific and appropriate requests, service providers should be encouraged to provide information on the type of services offered to users, including web links to the services and additional information as well as contact details for further information;
 - Where possible, the Internet service provider should be encouraged to provide a list, on request, of which types of data could be made available for each service to law enforcement on receipt of a valid disclosure request from law enforcement accepting that not all this data will be available for every criminal investigation;
51. Verification of source of requests – Service providers should be encouraged to take steps to verify the authenticity of requests received from law enforcement to the extent possible and necessary to ensure that customer records are not disclosed to unauthorized persons;
52. Response – Service providers should be encouraged to respond to requests from law enforcement in writing (or other legally acceptable electronic method) and ensure that a documentary trail is available in relation to requests and responses accepting that this trail might not include any personal data;
53. Standard response format – Taking into account the format for requests used by law enforcement, service providers should be encouraged to standardise the format for sending information to law enforcement;
54. Service providers should be encouraged to process requests in a timely manner, in line with the written procedures they have defined and provide guidelines to law enforcement on the average delays incurred to respond to requests;

55. Validation of information sent – Service providers should be encouraged to ensure that information transmitted to law enforcement is complete, accurate and protected;
56. Confidentiality of requests – Service providers should ensure the confidentiality of requests received;
57. Explanation for information not provided – Service providers should be encouraged to provide explanations to the law enforcement authority sending a request if requests are rejected or information cannot be provided;
58. Audit of the compliance system – Service providers should be encouraged to track and audit the system of processing requests for statistical purposes, for identifying strengths and weaknesses and publish such results if appropriate;
59. Coordination among service providers – being mindful of anti-trust/competition regulations service providers should be encouraged to coordinate their cooperation with law enforcement and share good practices among each other, and make use of service provider associations for that purpose.