Budapest Convention

- guideline for harmonised legislation
- framework for international cooperation
- MLA

IAP regional Conference – The Hague, February 2011

Erik Planken
Council of Europe, T-CY
e.planken@minjus.nl
What’s up

- What is T-CY
- Framework of the Budapest Convention
- Chapter 3: International cooperation
- Importance of swift communication; 24/7 cp network (and GPEN)
- Transborder activities; art. 32
- Summary and closing remarks
Legislative responses to cybercrime: What is required?

Criminalising conduct + Tools for efficient investigations – and safeguards + Efficient international cooperation

Harmonisation

= The Budapest Convention on Cybercrime
The Budapest Convention

- Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA
- Opened for signature in Budapest in November 2001
- 47 signatures, 30 ratifications, 7 assessments pending
- In force since July 2004

www.coe.int/cybercrime
Budapest Convention: Scope

Definitions/use of terms (Art 1)

- Computer system
- Computer data
- Service provider
- Traffic data
Budapest Convention: Scope

Criminalise conduct

Offences against computers - Offences by means of computers

1. Offences against the confidentiality, integrity and availability of computer data and systems
   - Illegal access to a computer system (Art 2)
   - Illegal interception (Art 3)
   - Data interference (Art 4)
   - System interference (Art 5)
   - Misuse of devices (Art 6)

2. Computer-related forgery (Art 7) and fraud (Art 8)

3. Content-related offences (child pornography (Art 9), xenophobia & racism [protocol])

4. Offences related to intellectual property rights and similar rights (Art 10)

www.coe.int/cybercrime
Budapest Convention: Scope

Procedural law tools

- Common provisions (Art 14 scope of procedural provisions, Art 15 conditions and safeguards)
- Expedited preservation of stored computer data (Art 16) and partial disclosure of traffic data (Art 17)
- Production order (Art 18)
- Search and seizure of stored computer data (Art 19)
- Real-time collection/interception of computer data (Art 20 traffic data, Art 21 interception of content data)

*These apply to all criminal offences involving a computer system!*

www.coe.int/cybercrime
Budapest Convention: Scope

**International cooperation**

**General principles**
- Art 23 General principles on international cooperation
- Art 24 Principles related to extradition
- Art 25 Principles related to mutual legal assistance
- Art 26 Spontaneous information
- Art 27 MLA in the absence of applicable international instruments
- Art 28 Confidentiality and limitation on use

**Specific provisions**
- Art 29 - Expedited preservation of stored computer data
- Art 30 - Expedited disclosure of preserved computer data
- Art 31 - Mutual assistance for accessing stored computer data
- Art 32 - Trans-border access to stored computer data
- Art 33 – MLA in real-time collection of traffic data
- Art 34 – MLA interception in content data
- Art 35 - 24/7 network

www.coe.int/cybercrime
International Cooperation

- The parties cooperate „to the widest extent possible“
- Applies to all criminal offences involving a computer system
- Chapter 3 does not supersede MLA’s
- Expedited preservation of data (traffic and content)
- Actual disclosure only upon a subsequent MLA request
International Cooperation

- Next to MLA transboder access to data (art. 32b)
  - Public available data
  - With voluntary and lawful consent of person who lawfully can disclose

- Now under debate for expansion
  - Cloud computing
  - Fast flux movement of data

- Find the right balance for unilateral action versus sovereignty and citizen’s rights

www.coe.int/cybercrime
Swift Communication

- 24/7 points of contact for cybercrime (art. 35)
- Immediate assistance for investigations, proceedings or collection of evidence
- Technical advice
- Preservation of data
- Collection of evidence

- CP to have contact with authority responsible for MLA (often prosecutor or judge)
Swift Communication

- G8
- COE
- EU (CICILE)
- GPEN

- Share resources (cp, technical assistance, training)
- Start in Europe
Summary + final remarks

- International Law is leading over Budapest
- Budapest offers more
- The more ratifications, the more shared benefits
- Good functioning 24/7 CP’s are key
- 24/7 CP’s and GPEN should unite and share resources
- Please provide feedback on the functioning of Budapest via your nat. Rep in T-CY
Thank you

e.planken@minjus.nl