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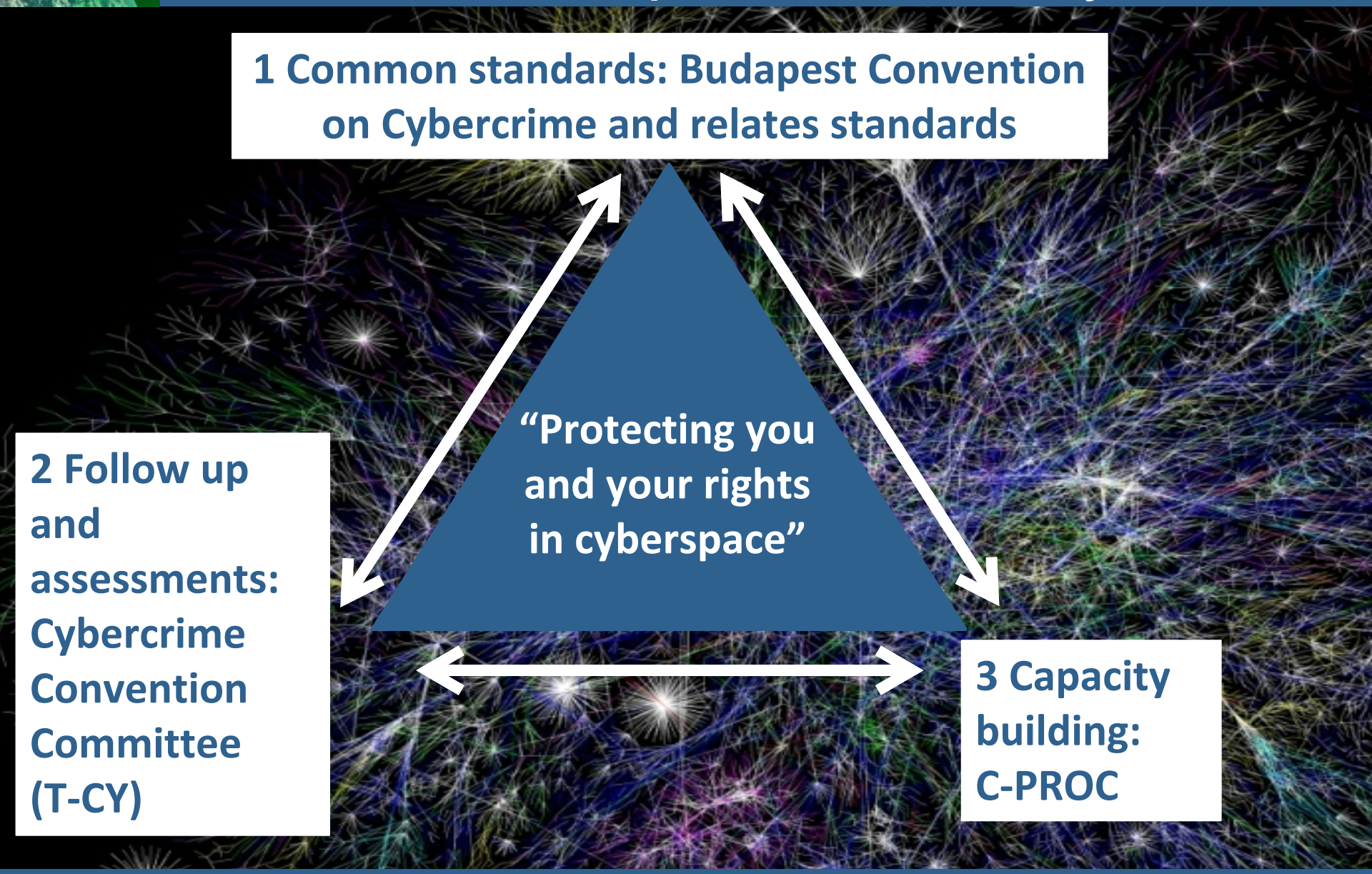
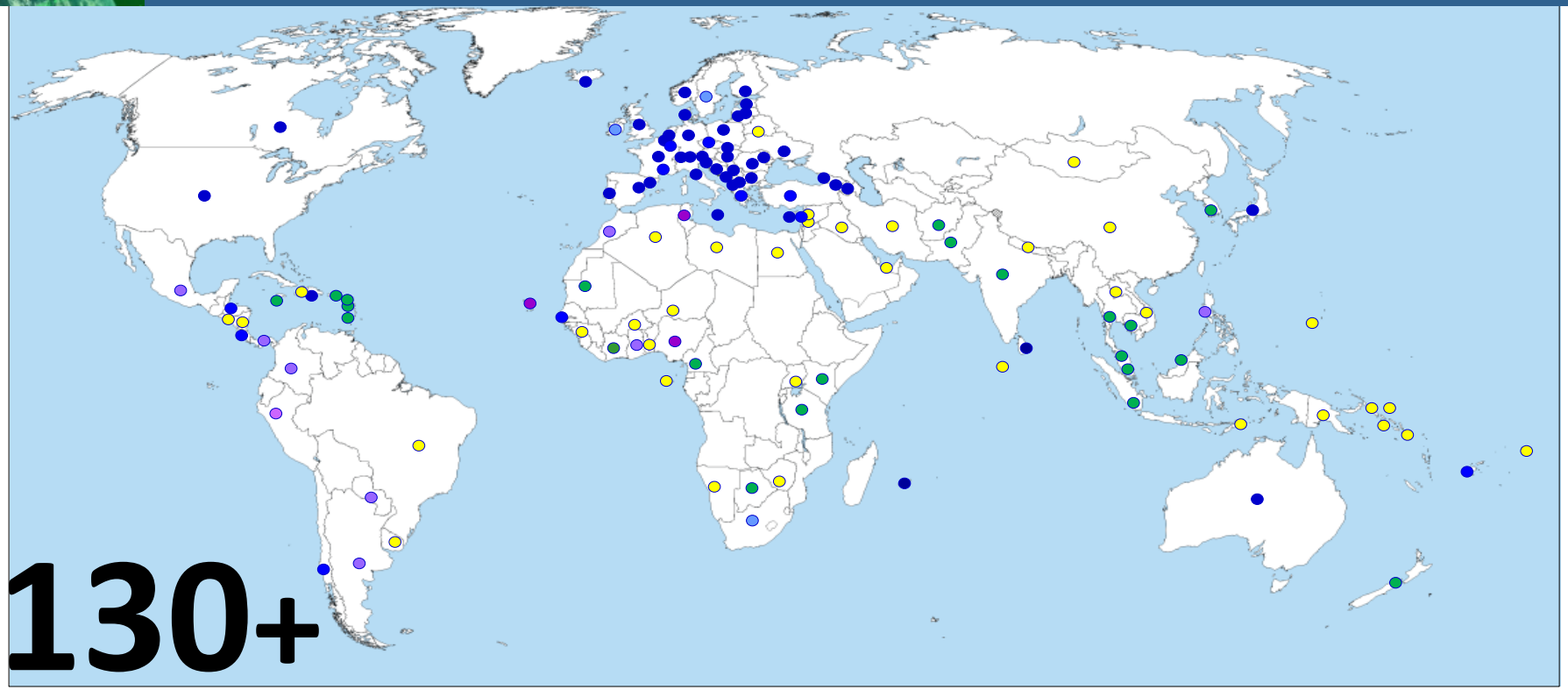
Strengthening the rule of law in cyberspace: The framework of the Budapest Convention on Cybercrime



Reach of the Budapest Convention



Indicative map only

Budapest Convention
Ratified/acceded: 56
Signed: 4
Invited to accede: 11
= 71

Other States with laws/draft laws largely in line with Budapest Convention = 20+

Further States drawing on Budapest Convention for legislation = 45+

Budapest Convention: scope

Criminalising conduct

- Illegal access
- Illegal interception
- Data interference
- System interference
- Misuse of devices
- Fraud and forgery
- Child pornography
- IPR-offences

+

Procedural tools

- Expedited preservation
- Search and seizure
- Interception of computer data

Limited by conditions and safeguards (article 15)

+

International cooperation

- Extradition
- MLA
- Spontaneous information
- Expedited preservation
- MLA for accessing computer data
- MLA for interception
- 24/7 points of contact

Harmonisation

The approach of the Council of Europe on cybercrime

Cybercrime Convention Committee (T-CY)

- 55 members (Parties to Convention), 14 observer States, 10 observer organisations (including EUROPOL and INTERPOL)
- Plenaries and working groups
- Assessing implementation of the Convention by the Parties
- Guidance Notes to use existing provision to address new challenges
- Preparation of new instruments ▸ Protocol to the Budapest Convention

Capacity building by C-PROC: Support to implementation of Budapest Convention and follow up to T-CY decisions

- Cybercrime@Octopus
- Cybercrime@EAP II and III
- iPROCEEDS - Cooperation on Cybercrime: targeting crime proceeds on the Internet
- GLACY+ EU/COE - Joint Project on Global Action on Cybercrime
- CyberSouth - Strengthen legislation and institutional capacities on cybercrime and electronic evidence

Cybercrime and electronic evidence: Challenges for criminal justice

- The scale and quantity of cybercrime, devices, users and victims
- Technical challenges (VPN, anonymisers, encryption, VOIP, NATs etc.)
- Cloud computing, territoriality and jurisdiction
  - Cloud computing: distributed systems ► distributed data ► distributed evidence
  - Unclear where data is stored and/or which legal regime applies
  - Service provider under different layers of jurisdiction
  - Unclear which provider for which services controls which data
  - Is data stored or in transit ► production orders, search/seizure or interception?
- The challenge of mutual legal assistance
- No data ► no evidence ► no justice

Crime and jurisdiction in cyberspace ► Issues

Specific issues to be addressed:

- Differentiating subscriber versus traffic versus content data
- Limited effectiveness of MLA
- Loss of location and transborder access jungle
- Provider present or offering a service in the territory of a Party
- Voluntary disclosure by US-providers
- Emergency procedures
- Data protection

Example: voluntary cooperation by providers

	Requests for data sent to Apple, Facebook, Google, Microsoft, Twitter and Yahoo in 2015		
Parties	Received	Disclosure	%
Austria	254	119	47%
Belgium	1 992	1 453	73%
Canada	1 157	884	76%
France	27 213	14 746	54%
Germany	29 092	15 469	53%
Italy	7 847	3 591	46%
Netherlands	1 605	1 213	76%
Poland	2 378	820	34%
Portugal	3 255	1 751	54%
Spain	4 151	2 092	50%
United Kingdom	29 937	21 075	70%
USA	89 350	70 116	78%
Total excluding USA	**138 612**	**82 529**	**60%**
Total including USA	227 962	152 644	67%

Crime and jurisdiction in cyberspace ► solutions proposed under the Budapest Convention on Cybercrime

Solutions:

1. More efficient MLA [agreed by T-CY]
2. Guidance Note on Article 18 [approved by T-CY in February 2017]
3. Domestic rules on production orders (Article 18) [agreed by T-CY]
4. Cooperation with providers: practical measures [agreed by T-CY]
5. Protocol to Budapest Convention [negotiations started in Sep 2017]

Solution 2: Guidance Note on Article 18

Guidance Note on Article 18 Budapest Convention on production of subscriber information:

- Domestic production orders for subscriber information if a provider is in the territory of a Party even if data is stored in another jurisdiction (Article 18.1.a)
- Domestic production orders for subscriber information if a provider is NOT necessarily in the territory of a Party but is offering a service in the territory of the Party (Article 18.1.b)

Agreed by T-CY on 28 Feb 2017

Solution 5: Protocol to Budapest Convention

A. Provisions for more efficient MLA

- Expedited MLA for subscriber information
- International production orders
- Direct cooperation between judicial authorities
- Joint investigations
- Emergency procedures for access to data
- Role of 24/7 contact points

B. Provisions for direct cooperation with providers in other jurisdictions

C. Framework and safeguards for existing practices of transborder access to data

D. Safeguards/data protection

Terms of reference approved in June 2017.
Negotiations: Sep 2017 – Dec 2019.

Support of LEA community needed to conclude Protocol for more efficient access to evidence in the cloud!

Save-the-dates

- UN Intergovernmental Expert Group on Cybercrime, Vienna, 3-5 April 2018 ▶ Focus on legal frameworks and criminalisation
- UN Commission on Crime Prevention and Criminal Justice, Vienna, 14-18 May 2018 ▶ Focus on cybercrime
- GLACY+ Steering Committee, Vienna, Monday, 14 May
- Cybercrime week at the Council of Europe, Strasbourg, 9-13 July 2018
  - 9 July: Plenary of Cybercrime Convention Committee
  - 10-11 (AM) July: Protocol Drafting Plenary
  - 11 July: (AM): Workshop for 24/7 contact points
  - 11 (PM) – 13 July: Octopus Conference


www.coe.int/cybercrime