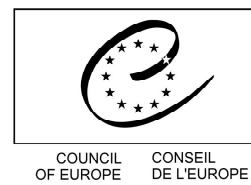


Web site: www.coe.int/cybercrime



Strasbourg, 23 April 2009

T-CY (2009) 06

**MULTILATERAL CONSULTATION AMONG THE CONTRACTING STATES TO THE
CONVENTION ON CYBERCRIME [CETS n° 185]**

(The Cybercrime Convention Committee T-CY)

**Fourth meeting
Strasbourg, 12 – 13 March 2009**

FULL MEETING REPORT

Executive summary

At its fourth meeting (12-13 March 2009), the Cybercrime Convention Committee (T-CY):

- elected Ms Betty Shave (United States) as Chair and Mr Markko Künnapu (Estonia) as Vice-chair of the T-CY;
- set up a Bureau composed of the aforesaid and three additional members, Ms Nora Kaiser (Germany), Mr Fabien Lang (France) and Mr Erik Planken (the Netherlands);
- examined certain provisions of the Convention on Cybercrime (CETS 185) discussing, in particular, issues pertaining to jurisdiction;
- decided to launch a questionnaire on transborder access to data;
- examined the practical co-operation in the framework of the 24/7 points of contact and decided to encourage further co-operation with the G8 High-Tech Crime Subgroup with a view to further strengthening the effective functioning of the network;
- adopted comments on the Parliamentary Assembly Recommendation 1855 (2009) "The regulation of audiovisual media services";
- adopted an opinion on the relationship between the Convention on Cybercrime and the draft Convention on counterfeiting of medical products and similar crimes involving threats to public health.

I. Opening of the meeting and adoption of the agenda

1. The meeting was opened by the Chair, Ms Betty Shave. The Director of Standard-Setting of the Council of Europe, Mr Jan Kleijssen, welcomed the participants to the 4th meeting of the Parties. He insisted on the need to ensure continuity in the work of the T-CY.
2. The agenda was adopted. The agenda and the list of participants are annexed to this report (see Annex I and II).

II. Election of the Chair and Vice-Chair by representatives of Parties of the Convention

3. Ms Betty Shave (United States) was re-elected Chair and Mr Markko Künnapu (Estonia) was elected Vice-Chair of the T-CY.

III. State of signatures, ratifications and accessions to the Convention (CETS No. : 185) and its additional Protocol (CETS No. : 189) (including progress made and likely future timetable)

4. The T-CY took note of the current state of signatures and ratifications of the Convention on Cybercrime and its Additional Protocol. Since the third meeting of the Committee three States (Germany, Italy and Latvia) have ratified the Convention. In addition, Azerbaijan, Georgia and Liechtenstein all signed the Convention in 2008.
5. The T-CY agreed that states, whose legislation is very close to meeting the requirements of the Convention, should be further encouraged to sign. The Caribbean and Latin-American States were mentioned as examples.
6. The Project on Cybercrime emphasised the fact that the implementation of the Convention must be supported worldwide. Therefore, a pro-active involvement of the Parties is necessary to:
 - achieve political, moral and practical support for the accession process from Parties and experts;
 - obtain funding, as resources are limited;
 - be able to respond to any need, also from non-member states. A pragmatic approach of flexibility to co-operate with non-member states is necessary.

The Project on Cybercrime also underlined that it is in the interest of the Parties to the Convention on Cybercrime that co-operation in the framework of technical assistance projects is extended to interested states or territories worldwide with a view to strengthening national legislation and international co-operation (including the 24/7 contact points) in the fight against cybercrime, even if these states and/or territories may not necessarily accede to the Convention.

IV. Review of certain provisions of the Convention on Cybercrime (CETS No. : 185) and its Protocol (CETS No. : 189)

- a. **Expedited preservation of stored computer data and traffic data, including partial disclosure of the latter (articles 16 and 17)**

7. The T-CY examined the issue of expedited preservation of stored computer data and traffic data regulated by Articles 16 and 17 of the Convention.

b. Questions of jurisdiction (article 22)

8. Mr Henrik Kaspersen (the Netherlands) presented the discussion paper he had written for the Project on Cybercrime, entitled “Cybercrime and Internet jurisdiction”. One of the recommendations of Mr Kaspersen’s paper is to carry out further studies on jurisdiction in cybercrime cases.

9. The T-CY took note of the discussion paper and agreed that further studies should be carried out, with focus on transborder access to data by law enforcement agencies. It decided to:

- instruct the Secretariat to prepare, in consultation with the Chair and interested delegations, a draft questionnaire on the need for direct transborder access to data and data flows where other measures are not adequate or fail;
- instruct the Secretariat to consult Parties and Signatories to the Convention, States invited to accede to the Convention as well as the CDPC on the draft questionnaire with a view to finalising it through written procedure;
- instruct the Secretariat to disseminate the finalised questionnaire to Parties and signatories to the Convention and States invited to accede to it with a view to presenting the replies obtained to the T-CY and CDPC.

c. Functioning of the « 24/7 Network » under article 35

10. The T-CY held an extended discussion on the functioning of the 24/7 network. One of the conclusions was that there is not enough awareness in states and among contact points themselves that they are part of the 24/7 network.

11. It was decided that the co-operation between the G8 High-Tech Crime Sub-group and the T-CY concerning the management of contact points should be further developed, possibly by attending each others meetings on the managing of contact points and by publishing a merged list of contact points with the official names of the competent authorities.

12. The issue of the publication of the discussion paper on contact points was discussed. Some delegations expressed doubts as to making the document public, as it does not necessarily reflect the views of all Parties to the Convention. The view was also expressed that a publication of this kind should be prepared jointly with the G8 High-Tech Crime Sub-group. Other delegations considered publication of the discussion paper to be helpful for further improving the functioning of the network.

13. The T-CY decided to:

- take note of the discussion paper “The functioning of 24/7 points of contact for cybercrime” prepared by the Project on Cybercrime;

- encourage further co-operation with the G8 High-Tech Crime Subgroup with a view to further strengthening the effective functioning of the network;
- make an official request to G8 High-Tech Crime Subgroup concerning the possibility to publish the official names of the competent authorities without revealing their full contact details;
- instruct the Secretariat to consult the Parties and the CDPC on publication of the discussion paper “The functioning of 24/7 points of contact for cybercrime” prepared by the Project on Cybercrime within a delay of three months.
- refer to the Bureau the questions of the attendance of the T-CY and the G8 High-Tech Crime Sub-group at each others meetings and of the management of collaboration on the 24/7 Network.

V. Mutual legal assistance in computer related cases in the light of information provided by the CDPC and the PC-OC

14. The Secretariat presented the replies to the questionnaire on mutual legal assistance in computer related cases. Following a request of the T-CY for guidance concerning best practices for mutual legal assistance in computer-related cases, the PC-OC had adopted a questionnaire on this issue. The replies to the questionnaire showed that co-operation on mutual legal assistance in computer related cases should be improved. Amongst other findings, it appears that the Convention has never been used as the sole legal basis for mutual legal assistance requests.
15. The T-CY decided to:
- continue its discussions on ways and means to facilitate mutual legal assistance under the Convention.

VI. Implementation of the Convention

16. The T-CY took note of the country profiles concerning the implementation of the Convention on Cybercrime. They are generally considered a useful tool for strengthening cybercrime related legislation, as the profiles show possible gaps.

VII. Information concerning the Project on Cybercrime

17. The Secretariat gave an update of current activities and the work plan for the Project on Cybercrime. The results of **Phase 1** were presented, with the focus on international co-operation, a 24/7 network and assistance by implementing and promoting the Convention on Cybercrime as global legislation.
18. **Phase 2** of the Project on Cybercrime was launched during the Octopus Interface Conference 2009. The main issues in this phase will be:
- law enforcement;

- implementing article 9 on offences related to child pornography;
 - Council of Europe Convention 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse;
 - data protection;
 - money-laundering on the internet.
19. The Octopus Interface Conference 2009, entitled “Co-operation Against Cybercrime”, was held in Strasbourg from 10-11 March. There were around 300 participants from 70 different states at the conference, a number of them representing the private sector. A summary report of the conference is attached (Annex III).
20. Mr Gilberto Martins de Almeida (Brazil) and Ms Cristina Schulman (Romania) gave a short presentation of Workshop 2 of the Octopus Conference concerning child pornography and sexual abuse on the internet. During the workshop it became clear that countries had not always adopted specific provisions concerning the use of the internet, but only general provisions on child pornography.
21. Mr Ivan Mijatovic (Croatia) gave a presentation of the recent “Operation Sledgehammer” clamping down on internet child pornography in Croatia.
22. The T-CY welcomed the work carried out by the Project on Cybercrime, which made an invaluable contribution to the Convention’s promotion and implementation worldwide. Participants insisted that documents prepared by the Project should indicate more clearly their origin and status.

VIII. Consideration of possible supplementation or strengthening of the Convention

23. The Secretariat presented Recommendation 1855 (2009) of the Parliamentary Assembly entitled “The regulation of audiovisual media services”, in which the T-CY was requested to consider an additional protocol to the Convention on Cybercrime concerning “illegal content”.
24. The T-CY agreed that “illegal content” is already sufficiently covered by the Convention and other international instruments in such a way that there is no need for an additional protocol to the Convention for the moment. It adopted the following opinion:

“The Committee has carefully considered point 12.4. of the Parliamentary Assembly’s recommendation. It notes that the Assembly has not indicated which kind of illegal content should be the subject of further additional protocols to the Convention on Cybercrime.

The Committee recalls that the Convention already includes the content-related offence of unlawful production or distribution of child pornography (article 9) and provides for the criminalisation of offences related to infringements of copyright and related rights (article 10). The 2003 additional protocol extended the Convention’s scope, including its substantive, procedural and international cooperation provisions, to cover also offences of racist and xenophobic propaganda.

Furthermore, in 2007 the CDPC reviewed the provisions of the Convention, welcomed the fact that the convention had gained widespread international support and agreed that

it was premature to amend its provisions (CDPC, 56th plenary meeting, June 2007, item 10 of the agenda).

The Committee is therefore of the view that there is currently no need for an additional protocol on illegal content, the latter being already covered by other existing international legal instruments.”

25. During the following general discussion, one delegation made a general statement arguing that the emphasis must be on promoting the Convention on Cybercrime worldwide and encouraging more countries to sign and ratify it as it stands now, rather than changing it. The US proposed to work at the political and technical level, focusing on a few candidates. It was underlined that Parties should use their special relationships and links with other states to encourage their accession to the Convention.
26. One observer delegation made a declaration expressing concerns about uncertainties regarding the application of article 32 (b) of the Convention and suggesting that the T-CY should initiate a process which would result in an amendment of its provisions. The T-CY did not take up this suggestion.

IX. Other work carried out in the Council of Europe concerning specific matters relating to cybercrime

Group of Specialists on counterfeit medical products (PC-S-CP)

27. The Secretariat of the PC-S-CP gave a presentation on the draft Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health. The T-CY adopted the following opinion on the relationship between this Convention and the Convention on Cybercrime:

“At the request of the Bureau of the CDPC, the Committee has examined the relevant provisions of the Convention on Cybercrime and the draft Convention on counterfeiting of medical products and similar crimes involving threats to public health with a view to assessing the relationship between the two instruments.

The Committee is of the opinion that the provisions of the Convention on Cybercrime, including on procedural law and mutual legal assistance, could be considered as applicable to the criminal acts of promotion and supplying of counterfeit medical products through the Internet.” (Appendix II)

Committee of Experts on Terrorism (CODEXTER)

28. The T-CY took note of a presentation by the Secretariat of CODEXTER on the current work related to cybercrime issues. A conference will be organised in Spain on terrorism and cyber security (Madrid, 16-17 April). This conference will bring experts together to share knowledge and to tackle internet use for terrorist purposes, by means of international co-operation. The T-CY was invited to participate in this event.

X. Work carried out by other fora

The Internet Governance Forum (IGF)

29. The T-CY took note of a presentation by the Secretariat of the CDMC about the IGF-meeting in Hyderabad, December 2008. The Convention on Cybercrime plays an important role in the work of the IGF, as it is used as the central reference and as a tool to combat cybercrime. The following issues were discussed during the last meeting:

- difficulties in transborder law enforcement;
- multi-stakeholder co-operation at all levels.

30. One of the central themes of the next meeting of the IGF will be cybercrime, with the focus on training, capacity building, best practices and raising awareness. The deadline for announcing participation in the next IGF meeting is **15 April 2009**.

The European Union (EU)

31. The representative of the Commission underlined the good co-operation between the EU and the Council of Europe, recalling in particular the Memorandum of Understanding between these two organisations. The Lisbon Treaty is expected to change the structure of current EU work in the criminal law field by transferring competencies from the member states to the Community. He presented the main features of a proposal for updating a framework decision pertaining to cybercrime issues by:

- adding aggravating circumstances, including large-scale cyber attacks;
- setting a deadline for contact points to react;
- obliging member states to collect data.

The Organisation for Economic Co-operation and Development (OECD)

32. The T-CY decided to strengthen its co-operation with the OECD, in particular by inviting the OECD to participate in its next meeting as an observer.

XI. Available training (by international bodies or states)

33. The US delegation distributed a paper concerning cybercrime training offered by the US Department of Justice to other States (Annex IV).

34. The Secretariat informed the T-CY that the Consultative Council of European Prosecutors (CCPE) had adopted an opinion on this matter (Annex V).

XII. Working methods of the Committee

35. The Secretariat explained the background for the proposal to set up a bureau of the T-CY and the relevant practice in the Council of Europe. The standard terms of reference and working methods of Article 13 of Appendix 1 to Resolution Res(2005) 47 of the Committee of

Ministers of the Council of Europe would apply *mutatis mutandis*. They foresee the following main functions of a bureau:

- to assist the Chair in conducting the committee's business;
- to supervise the preparation of meetings at the committee's request;
- to ensure continuity between meetings as necessary;
- to execute other additional specific tasks delegated by its committee.

36. The T-CY agreed that it would be important for the Committee to be able to pursue co-operation with other international organisations and committees of the Council of Europe as well as to carry out activities related to its mandate between the annual meetings. There was agreement that the work of the T-CY should become more visible through representation of the T-CY at relevant meetings and conferences of other organisations.

37. The T-CY decided to set up a bureau, consisting of the Chair, the Vice-Chair and three additional members. It elected Ms Nora Kaiser (Germany), Mr Fabien Lang (France) and Mr Erik Planken (the Netherlands) as members of the Bureau.

XIII. Next meeting of the T-CY

38. The next meeting will be held in 2010. The exact date will be determined in consultation with the Bureau.

39. In addition to the States Parties and Signatories to the Convention, States invited to accede the Convention will be invited to participate, as observers, in the next meeting of the T-CY.

APPENDIX I

DRAFT COMMENTS AND OPINIONS

Comments on Parliamentary Assembly Recommendation 1855 (2009) « The regulation of audiovisual media services »

The Committee has carefully considered point 12.4. of the Parliamentary Assembly's recommendation. It notes that the Assembly has not indicated which kind of illegal content should be the subject of further additional protocols to the Convention on Cybercrime.

The committee recalls that the Convention already includes the content-related offence of unlawful production or distribution of child pornography (article 9) and provides for the criminalisation of offences related to infringements of copyright and related rights (article 10). The 2003 additional protocol extended the Convention's scope, including its substantive, procedural and international cooperation provisions, to cover also offences of racist and xenophobic propaganda.

Furthermore, in 2007 the CDPC reviewed the provisions of the Convention, welcomed the fact that the convention had gained widespread international support and agreed that it was premature to amend its provisions (CDPC, 56th plenary meeting, June 2007, item 10 of the agenda).

The Committee is therefore of the view that there is currently no need for an additional protocol on illegal content, the latter being already covered by other existing international legal instruments.

APPENDIX II

Opinion of the T-CY on the relationship between the Convention on Cybercrime and the draft Convention on counterfeiting of medical products and similar crimes involving threats to public health:

At the request of the Bureau of the CDPC, the Committee has examined the relevant provisions of the Convention on Cybercrime and the draft Convention on counterfeiting of medical products and similar crimes involving threats to public health with a view to assessing the relationship between the two instruments.

The Committee is of the opinion that the provisions of the Convention on Cybercrime, including on procedural law and mutual legal assistance, could be considered as applicable to the criminal acts of promotion and supplying of counterfeit medical products through the Internet.

APPENDIX III

DRAFT AGENDA

1. Opening of the meeting
2. Election of the Chair and Vice-Chair by representatives of Parties to the Convention
3. Adoption of the agenda
4. State of signatures, ratifications and accessions to the Convention and its additional Protocol (including progress made and likely future timetable)
5. Review of certain provisions of the Convention on Cybercrime (CETS No. : 185) and its Protocol (CETS No. : 189)
 - a. Expedited preservation of stored computer data and traffic data, including partial disclosure of the latter (articles 16 and 17)
 - b. Questions of jurisdiction (article 22)
 - c. Functioning of the « 24/7 Network » under article 35
6. Mutual legal assistance in computer related cases in the light of information provided by the CDPC and the PC-OC
7. Implementation of the Convention

Country Profiles established by Project on Cybercrime
8. Information concerning the Project on Cybercrime
 - a. Activities to date and workplan 2009/2010
 - b. Octopus Interface Conference « Co-operation Against Cybercrime », 10 -11 March 2009
 - c. Results of workshop II of Octopus Interface Conference concerning child pornography
9. Consideration of possible supplementation or strengthening of the Convention
 - a. Parliamentary Assembly Recommendation 1855 (2009) « The regulation of audiovisual media services » [Rec. 1855 \(2009\)](#) /
 - b. General discussion
10. Other work carried out in the Council of Europe concerning specific matters relating to cybercrime

- a. Group of Specialists on counterfeit pharmaceutical products (PC-S-CP)
- b. Committee of Experts on Terrorism (Codexter)

11. Work carried out by other fora

- a. Third Internet Governance Forum (IGF) meeting in Hyderabad, December 2008 and preparations for the Fourth meeting in Sharm El Sheikh, November 2009
- b. European Union (EU) – proposal for a framework decision
- c. Others

12. Available training (by international bodies or states)

13. Working methods of the Committee

- a. Setting up of a bureau
- b. Interactive website

14. Any other business

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

16. Adoption of the abridged meeting report

APPENDIX IV
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