



Cybercrime and Online Child Safety: Progress Made in Current and Pending Laws in Asia Pacific

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Alignment of enacted computer security laws with COE Cybercrime Convention – 2007 Microsoft Study

Favourable alignment	Moderate alignment	Weak alignment
Australia	China	India
New Zealand	Hong Kong	Indonesia*
Singapore	Japan	
Taiwan	Malaysia	
Thailand	The Philippines	
	South Korea	
	Vietnam	

* No computer security laws have been enacted.

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Overview of key findings related to computer security and online child safety -2007

- Computer security
 - ⇒Area where legislative activity is the most prevalent in the Asia Pacific region
 - ⇒Area where domestic laws are most closely aligned with the benchmark legislation
- Online child safety
 - ⇒Area where domestic laws are the least developed vis-à-vis the benchmark legislation
 - ⇒Limited specific regulation of child pornography
 - ⇒Only Australia, Hong Kong and Taiwan criminalise computer-facilitated dealings in child pornography

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Observations – Jurisdictions with computer security laws that were favourably aligned with the benchmark legislation

Logic would suggest that these countries would be obvious candidates for accession to the Convention on Cybercrime.

Favourable alignment

Australia has had a change in Government and is presently undertaking an E-Security Review. The AG has been receptive to calls from Microsoft, COE and the AFP to consider requesting accession.

- Australia
- New Zealand
- Singapore
- Taiwan
- Thailand

New Zealand Likely to follow Australia's lead.

Taiwan just passed new spam legislation.

Changes in 2007 to Thailand's cybercrime law did not include strong child online safety provisions.

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Observations – Jurisdictions with computer security laws that were moderately aligned with the benchmark legislation

Just last month, China updated its Criminal Law. These changes include an illegal access provision for hacking and related computer crimes and stronger data protection provisions.

Moderate alignment

Despite Japan's signatory status, an upcoming election and lingering technical concerns make accession in the near term a remote possibility.

- China
- Hong Kong
- Japan
- Malaysia
- The Philippines
- South Korea
- Vietnam

The Philippines has significantly enhanced their pending legislation and have been invited to accede to the Treaty;

Vietnam is in the process of revamping its data protection and e-commerce laws and was an interested and willing participant in the recent COE-ASEAN workshop.

Malaysia hosted the workshop and is currently undergoing an assessment of their related laws.

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Observations – Jurisdictions with computer security laws that were weakly aligned with the COE Convention in 2007

In Indonesia, the Electronic Information and Transaction Act and a pornography bill were enacted in 2008, bringing it into closer alignment. Work is being done to bring Indonesia closer to accession.

Weak alignment

Sri Lanka has also made significant strides and has developed strong legislation and has taken steps towards accession.

- India
- Indonesia

Lao and Cambodia currently do not have domestic laws addressing cybercrime. Both countries participated in the COE-ASEAN workshop and will host in-country workshops this year.

India passed its IT Amendments Act in December, with better alignment with the Convention.

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India IT Act Amendments of 2008 Alignment with the Convention

India - Benchmark Comparison

Key: ■ Favourable alignment (E) Enacted (Title [x]) ■ Moderate alignment (P) Pending (Title [x] of the Council of Europe Convention on Cybercrime (COE)) ■ Weak alignment

Area	Legislation to be compared with benchmark	Benchmark legislation	Overall alignment	Areas of strong alignment	Areas of moderate alignment	Areas of weak alignment
Computer Security Laws	Information Technology Act, 2000 (E)	Council of Europe Convention on Cybercrime (Titles 1, 2 and 3)			<ul style="list-style-type: none"> Illegal access, data interference and system interference offences (but note the restrictive mental element - 'dishonestly or fraudulently') Liability for some types of aiding and abetting but only civil 	<ul style="list-style-type: none"> No misuse of device offence No attempt offences Onerous corporate liability provisions Intermediary safe-harbour has some significant shortcomings (including its application to intellectual property infringements and certain intermediaries)
	Online Child Safety Laws	Council of Europe Convention on Cybercrime (Title 3 COE)(ICMEC principles)			<ul style="list-style-type: none"> Some forms of computer-facilitated dealing in child pornography are criminalised Definition of child pornography 	<ul style="list-style-type: none"> Exceptions to liability where publication is for the public good, or is kept for bona fide heritage or religious purposes Mere possession of child pornography is not criminalised No scope for ISP reporting of dealing in child pornography

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