

# Implementation of the Cybercrime Convention 2001

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# Analysis Georgian Law and intended Amendments

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1. Aim and Purpose Cybercrime Convention
2. Ways of Implementation
3. Flanking Measures
4. Chapter about Georgian Law
5. Concluding Observations



# Aim and Purpose CCC 2001

- Enable and Facilitate International Co-operation, by means of:
  - Harmonisation of substantive cyber crime law;
    - See also EU Framework Decision 2003
  - Harmonisation of criminal procedural law concerning investigative powers;
  - Modernising Framework International Co-operation;
  - Providing Specific Measures for International Cooperation in Fighting Cyber Crime.

# Aim and Purpose

- Chapter II section 1 CCC
  - Definitions
  - C.I.A. offences *ICT OBJECT*
  - Computer-related *ICT INSTRUMENT*
  - Content-related *ICT ENVIRONMENT*
  - IPR
- Widening concept of cyber crime



# Aim and Purpose

- Chapter II, section 2
  - Investigative powers for the purpose of gathering electronic evidence
    - Circumventing Technical Impediments
    - Considering Network Environment
    - Expedited Action
  - Presumption:
    - Electronic evidence admissible
    - Technical capability
    - ICT-Expertise

# Aim and Purpose

- Chapter III: International Co-Operation
  - More Flexible procedures
  - Expeditedness
  - Access/assistance
  - Providing basis for co-operation

# Aim and Purpose

- Chapter IV: Regulation around the Convention
  - Coming into force
  - Accession
  - Reservations/declarations
  - Consultation of Parties



# Ways of Implementation

- Parties may go beyond the level of the agreed obligations, if not in conflict with the text and meaning of CCC.
- Parties may choose to apply:
  - Specified Declarations
  - Specified Reservations
  - Other offered choices whether or not in the legal text.
- Preference for CC
- Even stronger preference for CPC



# Implementation Substantive Law

- Categories
  - Cia-offences
  - Computer-related
  - Content-related
  - IPR
- Method
  - Stay as close to the text as possible. If necessary, enact parallel provisions
  - Assimilation clauses. Review **all** forgery and fraud provisions. If possible enact joint *technology-independent* provisions. Criminalise also preparatory acts.
  - On line conduct should not be differently criminalised than on-line conduct. Review and look for common elements.
  - IPR-specific

# Implementation of Procedural Law

- Chapter II, section 2 is not restricted to cases of Cybercrime!!
- Harmonisation of Procedural Law in general is not intended
- Similarity powers concerning stored data and seizure provisions:
  - Grounds, finality, authority, duration, legal challenge, etc.
- Similarity powers concerning flowing data and powers of interception
  - Grounds, finality, authority, duration, legal challenge, etc.



# Flanking Measures (not in CCC)

- Electronic Evidence  $\equiv$  Forensic evidence
  - Precise Procedures
    - Collection, preservation, presentation
  - Forensic expertise
  - General Expertise
    - Law enforcement, prosecution service, judiciary
- Industry Co-operation
  - Software, Security, Providers
  - See e.g. CoE Guidelines



# Georgian Cybercrime Law

4.1 Introduction

4.2 Definitions

4.3 Substantive Law

4.4 Jurisdiction

4.5 Procedural Law

4.6 International Co-operation

4.7 Other Business?





# Georgian Law- Intro

- Sources in English
  - A brief overview....including 4 Annexes (BO'
  - Country Profile Georgia (PRO)
  - Some Informal Documents
  - *Caveat*: Law in Force?
- Translation of legal texts:
  - Translation into a foreign language is a source of misinterpretation and misunderstanding
- Order for Discussion: Articles CCC 2001



# Georgian Law- Definitions

- Definitions: Article 1 CCC
  - Computer system
  - Computer data
  - Service Provider
  - Traffic data
- Standard Notions
  - Intent?
  - Without right?

# Georgian Law- Definitions

## Computer system:

- Article 284, 285, 286 CCG:
  - computer, computer system or computer network ('their networks')
  - Mobile phone (284 para 1) is *not* a computer system?
- Article 285 CCG:
  - computer or *existing system*
- Different Concepts in provisions on protection of critical infrastructures
- Note: exclusion of petty offences.



# Georgian Law-Definitions

Computer data:

- Article 284 CCG: *computer information protected by law*
  - *When precisely protected?*
  - *Must include data carriers? What amounts to access to information stored on a data carrier?*





# Overview Substantive Law c.i.a.offences

- Illegal access
- Illegal Interception
- Data interference
- System Interference
- Illegal Devices
- Article 284, para 1-3
- Article 158, para 1-3
- Article 284, para 1
- Art. 284, para 1 + 318
- Article 285, para 1-2

# Article 284 CCG

- Article 284 combines illegal access, data interference, computer espionage and system interference.
- CCC thereto distinguishes **individual** crimes, for individual application
- Some acts to be defined as aggravated circumstances
- Element: Infringement of security measures

# Illegal Interception

- Article 158:
  - *Distinction between wire tapping and interception?*
  - *Object of tapping or Interception?*
  - *Without Right?*
  - *Any transfer of computer data included?*
  - *Radiation? IR-interception?*



# Data Interference

- Article 284 CCG
  - *Clarify notion of copying*
  - *Separate access and data interference*
  - *Intentional/without right*
  - *Seriousness*



# Computer Sabotage

- Article 284 para 1 CCG
  - *Causal relation between access and malfunctioning?*
  - *What is malfunction? Who determines?*
- Article 318 CCG
  - *Relation to article 284 CCG?*
  - *Importance/function of computer system?*

# Illegal devices

- Article 285 CCG:
  - *Too limited scope of malware*
  - *What is damaging computer? Changes?*
  - *Reference to illegal access?*
  - *Physical devices?*
  - *Clear references to articles instead of copying text of conduct*

# Computer-related offences

- Computer Forgery
- Computer Fraud
- *Electronic documents*
- *Phishing, skimming, man in the middle, abuse of creditcard data*
- ???
- ???

# Georgian Law

- Child Porn
- Article 255, para 1-3
- IPR
- Article 189
- Racism Xenophobia
- Article 142



# Child Pornography

- Article 255, as proposed to be amended
  - *What is visual?*
  - *Clarify realistic images*
  - *Illegal?*

# IPR-offences

- *Copyright Law and Law on Neighbouring Rights ??*
- *Obtaining income?*

# Racism & Xenophobia

- *Will follow in due time?*

# Georgian Law

- Aiding Abetting
- Corporate Liability
- Sanctions
- *No specification*
- *Articles 107 (3 times), cyber crimes excluded?*
- OK





# Jurisdiction

- No problems with article 22 CCC except:
  - *Dedere aut iudicare?*
  - *Consultation*
- Moreover
  - *Ne bis in idem*



# Procedural Law

- Preadable problem:
  - Admissibility of Electronic Evidence
  - Enact/amend law, article 121 could be basis
  - Additional Procedures
  - Forensic Expertise
  - Avoid Internal Jurisdiction Conflicts
  - Procedures and safeguards???

# Procedural Law

- Central Procedure under CPC recommended, should be generally applicable not only for cyber crime crime but for the investigation of any crime (see article 15 CCC)
- Definitions:
  - Service Provider
  - Traffic Data



# Search of Computer System (article 389)

- *How to obtain access to a location?*
- *If access obtained why separate warrant for computer search?*
- *Ground for access warrant? Idem computer search?*
- *Remote search? When and how?*
- *Seizure of information?*
- *Clarify Conditions and safeguards*
- *Missing measures*



# Production Order (article 18 CCC)

- Easy alternative for search
- Parallel with tangibles and/or surface mail
- Any data, regularly preserved or processed by third Party
- Combination with preliminary measures
- Subscriber Information: essential for use of traffic data
- Conditions and safeguards

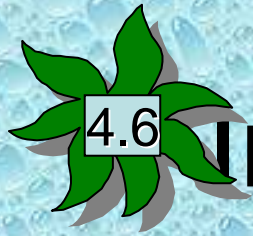
# Other Powers

- Complex of Production Orders, also in relation with interception
- Complex of Interception –
  - Insert in CPC
  - General Applicability
  - Regulate Technical Aspects
  - Conditions and Safeguards
  - Co-operation Model
- Complex of Preliminary Measures

# Georgian coverage of Article 18CCC

- Only partial:
  - see Draft Amendment Law on Electronic Communication in case of child pornography
  - Law on Operative and Search Activity?
  - Inspection and seizure of Post and Telegraph Communication (article 330)??
- Applicable to Internet?
- Applicable to any crime?





## International Co-operation

- Co-operation yet only possible to a limited extent:
  - Dual Criminality Requirements
  - Special measures not available
  - Flexible concepts for co-operation not yet copied
  - Extradition? Applicable Treaties?
  - 24/7 contact point?





# In Conclusion

- There is work to do
  - Substantive Law: further amendments and restructuring recommended
  - Procedural Law: major work still to be done
- Council of Europe is available for further advise

*Lao-Tse: More laws means more criminals*

*Maintaining legal gaps means more will  
criminals escape*