

# Meeting the challenge of cybercrime in Latin America

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# Fighting Cybercrime – CoE response under Global Project on Cybercrime (Phase 2)

High-tech crime units

LEA-ISP cooperation  
(guidelines 2008)

Convention:      Guideline      on  
legislation for more 100 countries

Online protection of children against  
sexual exploitation

## **Budapest Convention**

- Criminalising conduct
- Investigative tools  
(procedural law)
- Legal framework for  
international  
cooperation

Training for police  
judges and prosecutors

Efficient MLA

24/7 points of contact

Other treaties, laws and  
instruments (e.g. Protocol on  
Xenophobia and Racism  
Convention on the Protection of  
Children against Sexual  
Exploitation and Sexual Abuse)

Human rights, data protection, rule of law principles

# Scope of the Budapest Convention

## **Criminalising conduct**

- Illegal accesss
- 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



## **International cooperation**

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

Harmonisation



# Budapest Convention on Cybercrime

- Harmonize the domestic criminal substantive law elements of offences and
- Provide procedural law powers necessary for the investigation and prosecution of such offences as well as of other offences committed by means of a computer system

Art 9 - Child pornography

Art 6 - Misuse of devices

Art 4 - System interference

Art 16- Expedited preservation

Art 18 - Production order

## Model law function of the Convention

- Use as a checklist
- Compare provisions
- Use wording

Country profiles on cybercrime legislation as a tool for analysis and sharing of good practices

[www.coe.int/cybercrime](http://www.coe.int/cybercrime)



# The Convention on Cybercrime: status

Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA

In 2001 the Convention was adopted/opened for signature and entered into force on 1.07.2004

5 countries (Costa Rica, the Dominican Republic, Mexico, Philippines and Chile) have been invited to accede

Australia and Argentina requested accession

Total number of signatures not followed by ratifications:	16
Total number of ratifications/accessions:	30

- Art 36 - Signature and entry into force (open to member States and non-members which have participated in its elaboration)
- Art 37 - Accession (any State may accede following majority vote in Committee of Ministers and unanimous vote by the parties entitled to sit on the Committee of Ministers)



**1 March 2009 – 30 June 2011**

## **Council of Europe global Project on cybercrime (phase 2) funded by contributions from Estonia, Monaco, Romania, Microsoft , McAfee and CoE**

The objective is to promote broad implementation of the Convention on Cybercrime (ETS 185) and its Protocol on Xenophobia and Racism (ETS 189) and related international standards.

This is to be achieved through results in the following areas:

- Legislation and policies
- International cooperation
- Law enforcement – service provider cooperation in the investigation of cybercrime
- Financial investigations
- Training of judges and prosecutors
- Data protection and privacy
- Exploitation of children and trafficking in human beings.



## **Global Project on Cybercrime (Phase 2): Cybercrime policies and legislation strengthened**

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- **Cooperation with 120+ countries**
- **Legislation strengthened in more than 100 countries:**
  - ✓ **European countries**
  - ✓ **Argentina, Colombia, Dominican Republic**
  - ✓ **Benin, Botswana, Nigeria, Senegal, South Africa, Uganda**
  - ✓ **ASEAN, India, Indonesia, Philippines**
- **Contribute to regional legislative workshops in Asia, Africa and Latin America**



# **The EU/COE Joint Project on Cybercrime in Georgia**

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## **Objectives/results:**

- **Legislation**
  - Draft amendments in line with the Convention on Cybercrime and related European standards on data protection to be submitted to the Government
- **Training policies and modules**
  - train the trainers course
  - training materials available
  - the CoE concept on cybercrime training for judges and prosecutors in Georgia to be implemented
- **Proposals for institution building**
  - expert report: assessment and making proposals
  - MoAI decision to establish a HTC unit
  - formally to be functional once the new legislation enters into force
- **LEA/ISPs cooperation**
  - legislation in place needed to allow such cooperation
  - memorandum on LEA-ISPs cooperation concluded





# COE/EU cooperation on Cybercrime

- ▶ **Stockholm Programme for 2010-2014** adopted in December 2009: *“As soon as possible, Member States should ratify the 2001 Council of Europe Cyber-crime Convention. This Convention should become the legal framework of reference for fighting cyber-crime at global level – section 4.4.4)*
- ▶ **Council Conclusions Concerning an Action Plan** to implement the Concerted Strategy to Combat Cybercrime (3010th General Affairs Council Meeting, Luxembourg, 26 April 2010): *“The European Council's call on Member States, as laid down in the Stockholm Programme, to ratify the 2001 Council of Europe Cybercrime Convention as soon as possible, to give their full support to the national alert platforms in charge of the fight against cybercrime and the Council's emphasis on the need for cooperation with countries outside the European Union..”*
- ▶ **12th UN Congress on Crime Prevention and Criminal Justice** (Salvador, Brazil, 12-19 April 2010): *Need for a global capacity building effort to strengthen the full implementation of existing treaties and standards*



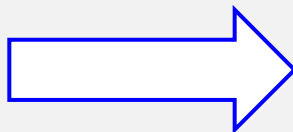
## **Concerns before engaging in the preparation of a new treaty**

- Launching of the multi-year work on a new treaty would disrupt the legislative reform processes already underway in many countries
- Countries that have already undergone complex legislative reforms and implemented the Convention would be reluctant to repeat the effort (more than 100 countries around the world have cybercrime legislation in place or are in process of preparing legislation using the Convention)
- “Budapest” Convention is a fairly complete treaty with not only substantive law but also a range of procedural law measures and specific procedures for international cooperation. Is it conceivable to develop a treaty with a similar or even higher standard at the level of the United Nations?
- Risks: - the outcome to be a more basic treaty which would de facto establish a lower standard for developing countries, and thus further enhance the digital divide and prevent effective cooperation
  - be less specific in terms of procedural law provisions and thus also contain fewer safeguards and conditions
  - reduce the protection of human rights when investigating cybercrime
- General problem of international treaties: their actual implementation or transposition into domestic law and practice is limited
- Given the efforts already underway in the majority of countries and the general scarcity of funding, wouldn't it be more appropriate to focus resources on the implementation of existing instruments, that is, provide technical assistance to countries in the implementation of the “Budapest” Convention and related measures?

# **The way ahead: launch a global capacity building effort**

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**Greatest impact by common effort to support implementation of existing tools and instruments against cybercrime**



- 1. Review needs**
- 2. Provide support**
- 3. Assess progress**

## **Support**

- Strengthening of legislation**
- Judicial training**
- LEA training**
- High-tech crime units**
- LEA-ISP cooperation**
- International cooperation**
- Protection of children**
- Rule of law and human rights**
- Political commitment**



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*THANK YOU FOR YOUR  
ATTENTION*

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