

Octopus Conference

Workshop 3 - Service provider/law enforcement cooperation

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# The Voluntary Cooperation Model and Production Orders for Subscriber Information

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# LEA/service provider cooperation: current practices

- **Subscriber information most often needed in criminal investigations**
- **Often held by service providers in other jurisdictions**
- **US providers permitted to disclose subscriber information voluntarily to LEA in other jurisdictions**
- **LEA of Parties address requests directly to US providers**
- **More than 135,000 requests/year by Parties to major US providers, include to those based within the EU**
- **Disclosure of subscriber or traffic data (ca. 60%)**

# LEA/service provider cooperation: current practices

	Requests for data sent to Apple, Facebook, Google, Microsoft, Twitter and Yahoo in 2014		
Parties	Received	Disclosure	%
Albania	24	7	29%
Armenia	11	2	18%
Australia	6 438	4,236	66%
Austria	246	73	30%
Azerbaijan	-	-	
Belgium	1,804	1,316	73%
Canada	850	477	56%
Croatia	45	34	76%
Cyprus	38	21	55%
Czech Republic	333	204	61%
Denmark	362	225	62%
Dominican Republic	54	30	56%
Estonia	35	19	54%
Finland	144	102	71%
France	21,772	12,863	59%
Georgia	1	0	0%
Germany	25,519	13,801	54%
Hungary	345	159	46%
Iceland	3	2	67%
Italy	9,365	4,620	49%
Japan	1,617	1,010	62%
Romania	80	40	50%
Serbia	16	9	56%
Slovakia	107	36	34%
Slovenia	11	6	55%
Spain	4,462	2,391	54%
Sri Lanka	1	-	0%
Switzerland	462	266	58%
“The former Yugoslav Republic of Macedonia”	-	-	
Turkey	8,405	5,625	67%
Ukraine	8	2	25%
United Kingdom	20,127	13,894	69%
USA	80,703	63,147	78%
<b>Total excluding USA</b>	<b>108,829</b>	<b>64,901</b>	<b>60%</b>
<b>Total including USA</b>	<b>189,532</b>	<b>128,048</b>	<b>68%</b>

# LEA/service provider cooperation: current practices

## Requests for data sent to Apple, Facebook, Google, Microsoft, Twitter and Yahoo in 2015

Parties	Received	Disclosure	%
Australia	6 777	4 580	47%
Belgium	1 992	1 453	68%
Canada	1 157	884	76%
Finland	227	172	76%
France	27 213	14 746	54%
Germany	29 092	15 469	53%
Japan	2 018	1 112	55%
Netherlands	1 605	1 213	76%
Portugal	3 255	1 751	54%
Slovakia	102	29	28%
United Kingdom	29 937	21 075	70%
USA	89 350	70 116	78%
<b>Total excluding USA</b>	<b>138 612</b>	<b>82 529</b>	<b>60%</b>
<b>Total including USA</b>	<b>227 962</b>	<b>152 644</b>	<b>67%</b>

## Apple

**Apple will accept service of legally valid law enforcement information requests by email from law enforcement agencies, provided these are transmitted from the official email address of the law enforcement agency concerned. Law enforcement officers in EMEIA submitting an information request to Apple should complete a Law Enforcement Information Request template [<http://www.apple.com/legal/privacy/emeia-le-inforequest.pdf>] transmit it directly from their official law enforcement email address to the mailbox [law.enf.emeia@apple.com](mailto:law.enf.emeia@apple.com). This email address is intended solely for submission of law enforcement requests by law enforcement and government agents.**

**Unless emergency procedures are used, Apple only discloses content upon a search warrants pursuant to an MLA request or a similar cooperative effort.**

## Facebook

Requests from regions other than the USA or Canada need to be sent to Facebook Ireland and are handled by the Facebook Ireland law enforcement unit.

The Facebook conditions and procedures for disclosure to foreign authorities are not very specific.

It would seem that Facebook Ireland Limited is able to disclose subscriber information [and “certain other records” meaning traffic data] upon request.

Facebook will not process broad or vague request.

## Google

**For requests from outside US, Google can provide the same type of data as the one provided for request inside US if the request passes through an MLA process.**

**As stated: “On a voluntary basis, we may provide user data in response to valid legal process from non-U.S. government agencies, if those requests are consistent with international norms, U.S. law, Google's policies and the law of the requesting country”**

## **Microsoft**

**For requests from outside the US, Microsoft can provide basic subscriber information (BSI) and transactional data, directly to upon receipt of a request to their office in the Republic of Ireland.**

**For content data, an MLA request needed.**

**Microsoft compliance team reviews the requests for data to ensure the requests are valid, rejects those who are not valid, and only provides data specified in the legal order.**





# Cloud Evidence Group: Issues re voluntary cooperation

**Practice of US providers valuable for crime prevention and criminal justice, but (see section 3.5 of CEG Final Report):**

- Volatility of provider policies and unpredictability of disclosure
- “US” versus “European” and other providers
- Location of data versus location of person in possession or control
- Data protection
- Domestic legal basis for obtaining subscriber information
- Direct preservation requests
- Emergency requests
- Customer notification
- Lawful requests versus voluntary cooperation

## **CEG conclusion:**

- More consistent and transparent policies/procedures needed
- Greater certainty through domestic and international legal framework needed

# Issue: Data protection and other safeguards

- Data protection requirements normally met if powers to obtain data defined in domestic criminal procedure law and/or MLA agreements
- Increasing “asymmetric” disclosure of data transborder
  - From LEA to service provider ► Permitted with conditions
  - From service provider to LEA ► Unclear legal basis ► providers to assess lawfulness, legitimate interest ► risk of being held liable ■ Confidentiality requirements
- Data protection concerns [see Section 3.7 CEG rep. What legal basis for transmission of data to providers and voluntary disclosure by providers from April 2018?]
- = Clearer framework for public to private to public disclosure transborder required, especially in view of the forthcoming EU General Data Protection Regulation and Directive

## Combination of 5 solutions:

1. More efficient MLA
2. Guidance Note on Article 18
3. Domestic legal basis for production orders (Article 18 Budapest Convention)
4. Cooperation with providers: practical measures
5. Protocol to Budapest Convention

## **Cooperation with providers: practical measures**



# Cloud Evidence Group: Cooperation with providers

**Pending longer-term solutions:**

## **Practical measures to facilitate transborder cooperation between service providers and criminal justice authorities**

- **How to come more consistent policies/procedures for direct cooperation?**
- **Focus on disclosure of subscriber information upon lawful requests in specific criminal investigations**
- **Emergency situations**
- **Consideration of legitimate interests and data protection requirements**
- **T-CY to hold annual meetings with providers**
- **COE to maintain online resource on provider policies and procedural rules in Parties**
- **C-PROC to involve providers in capacity building projects**
- **T-CY to liaise with EU Commission**

**Guidance note on production orders for subscriber information (Article 18 Budapest Convention)**

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

- **Domestic production orders 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)**

## **T-CY interpretation of Article 18 Budapest Convention with respect to subscriber information:**

- **The scope of Article 18.1.a**
- **The scope of Article 18.1.b**
- **Jurisdiction**
- **What are the characteristics of a “production order?”**
- **What effect does the location of the data have?**
- **What is “offering a service in the territory of a Party?”**



# Guidance Note on Article 18 (as discussed in T-CY plenary)

## Domestic production order IF

The criminal justice authority has jurisdiction over the offence in line with Article 22 Budapest Convention;

AND IF

The service provider is in possession or control of subscriber information

AND IF

### Article 18.1.a

The person is in the territory of the Party. For example, the service provider is registered as a provider of electronic communication services, or servers or parts of its infrastructure are located in the Party;

OR

### Article 18.1.b

The service provider is “offering a service in the territory of the Party”, when, for example:

- the service provider enables persons in the territory of the Party to subscribe to its services, AND
- orients its activities at subscribers, or makes use of subscriber information in the course of its activities, or interacts with subscribers in the Party;

AND IF

the subscriber information to be produced is relating to services of a provider offered in the territory of the Party, even if those services are provided via a technical geographic domain referring to another jurisdiction