

Crime and jurisdiction in cyberspace ► solutions under the Budapest Convention on Cybercrime

Context:

Budapest Convention on Cybercrime ► Cybercrime Convention Committee (T-CY) ► Cloud Evidence Group ► Recommendations September 2016 ► now under consideration by T-CY

Rationale:

- Cybercrime AND electronic evidence in relation to any crime
- E-evidence on servers in foreign, unknown, multiple or shifting jurisdictions, in the cloud
- No data, no evidence, no prosecution, no justice, no rule of law (in cyberspace)

Issues:

- Differentiating subscriber versus traffic versus content data
- Limited effectiveness of MLA
- Loss of location and transborder access jungle
- Provider present or offering a service in the territory of a Party
- Voluntary disclosure by US-providers
- Emergency procedures
- Data protection

Solutions:

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