ECOWAS Directive and related texts on Cyber legislation

ECOWAS-CoE Regional Conference on Cyber legislation
11 September 2017

ECOWAS Commission
ICT in ECOWAS

- Regional integration
- Establishment of a single Digital Market in West Africa
Cybersecurity & Cybercrime

Current Situation

- Delay in the harmonisation of legal frameworks
- Preeminent positions in global cybercrime ranking and lot of damages
- Poor awareness
- Lack of national and regional cyber strategies
- Desperate need of capacity building
- Few CERT/CSIRT
Cybersecurity & Cybercrime

- Challenges
  - Domestication
  - Skillsets
  - Cooperation
ECOWAS Initiatives on Cybersecurity & Cybercrime

**Objectives**

- to strengthen the security and resilience of vital ICT infrastructure
- to secure and encourage use of ICT

**Three community Acts developed and adopted to secure cyberspace:**

- Supplementary Act on Electronic Transactions
- Supplementary Act on Personal Data Protection
- Directive on Fighting against Cybercrime

**ECOWAS Cyber security Agenda**
ECOWAS Directive on fight against Cybercrime

- **Aim:**
  - Adapt the substantive criminal law and procedures of Member States to address cybercrime

- **Key Provisions**
  - Offences specifically related to ICT
  - Incorporating traditional offences into ICT offenses
  - Provides sanctions for cybercrime offenses
  - Rule of Procedure

- **Directive in compliance with**
  - Budapest Convention
  - AU Convention on Cybersecurity and data protection

ECOWAS Directive on fight against Cybercrime

- Offences specifically related to ICT
  - Includes fraudulent access and remaining to computer systems and fraudulent access, input, interception and manipulating of electronic data

- Incorporating traditional offences into ICT offenses
  - Use of computer systems to perpetrate traditional offences

- Provides sanctions for cybercrime offenses
  - Major Penalties and Supplementary Penalties

- Rule of Procedure
  - Includes key provisions for investigation & cooperation: Search or access to a computer system, Expedited preservation of Data, Method of Proof, Judicial Cooperation
ECOWAS Supplementary Act On Personal Data Protection

Aims to fill the legal gap relating to personal data protection within the Community and at establishing in each Member State, a mechanism against privacy through personal data collection, processing, transmission, storage and use

- Legal Framework for personal data protection
- Formalities for executing personal data processing
- Institutional Framework for the protection of personal data
- Principals guiding the processing of the subject of processing
- Rights of an individual whose personal data are the subject of processing
- Obligations of personal data controller
ECOWAS Supplementary Act
On Personal Data Protection

- Legal Framework for personal data protection
  - Requirement for Member States to establish a legal framework of protection for privacy of personal data

- Formalities for executing personal data processing
  - Classifies types of data and which is subject to/exempt from declaration.
  - Formalities relating to requesting, processing and storing personal data.

- Institutional Framework for the protection of personal data
  - Relating to the establishment, composition, responsibilities of the data protection authority

- Principals guiding the processing of the subject of processing
  - Principles to guide both providers and requestors of personal information. E.g. on consent and legitimacy, accuracy, confidentiality and security, choice, prohibition of direct prospecting, etc

- Rights of an individual whose personal data are the subject of processing
  - Right to information Right of access
  - Right to object Right to rectification and destruction

- Obligations of personal data controller
  - Obligations of confidentiality Obligations of security
  - Obligations of preservation Obligations of Durability
ECOWAS Supplementary Act On Electronic Transactions

Defines the rules to regulate Electronic Transactions, notably the obligations and responsibilities of actors and measures to secure electronic transactions.

- Electronic Commerce
- Electronic Advertising
- Electronic Contract
- Security on electronic transactions
ECOWAS Supplementary Act On Electronic Transactions

- **Electronic Commerce**
  - Access to information by goods/services supplier
  - Indication of price
  - Contractual liabilities
  - Applicable law

- **Electronic Advertising**
  - Identification of the advertisement
  - Identification of price
  - Identification and accessibility of the offer
  - Prohibition of direct prospecting

- **Electronic Contract**
  - Contract negotiation
  - Transmission of contract information
  - Condition of contract validity
  - Acknowledgement of receipt

- **Security on electronic transactions**
  - Electronic signatures
  - Conditions of acceptance of electronic signatures
### Status of Cyber law reforms in ECOWAS
(update: June 2017)

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| **Bills**              |                          |            |
| ✓ Nigeria              | ✓ Burkina Faso           |            |
Other Related Texts on Cybercrime

- ECOWAS has established some rules for cross-border cooperation and technical assistance which could be used by Member States to render mutual assistance on cybercrime issues
  - Article 57 of the ECOWAS revised Treaty on judicial and legal cooperation, which prescribes that the Member States undertake to promote judicial cooperation with a view to harmonizing judicial and legal systems
  - Convention A/P1/7/92 of ECOWAS relating to mutual aid on judicial penal matters
  - *ECOWAS Convention A/P1/8/94 relating to Extradition*
  - Agreement on cooperation in criminal police matters between the Member States of ECOWAS
  - Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS
Key actions for Member States

- Adopt and implement necessary legal frameworks in line with ECOWAS texts and International Conventions to fight cybercrime

- Create specialised units to fight against cybercrimes

- Train law enforcement institutions personnel, especially judges and magistrates on the specificities of cybercrimes

- Balance Privacy and Law Enforcement Needs (SA on data protection vs Directive on cybercrime)

- Improve abilities to collect, to share and to preserve electronic evidence regionally and internationally

- Enhance regional cooperation by sharing information and best practices
Outlook – Implement ECOWAS Cyber security Agenda

- Fight Cybercrime
  - Appropriate legislation
  - Sensitization and capacity building
  - Establish forensic laboratories
  - International cooperation...

- Improve the cyber security environment
  - Define National cyber security strategy
  - Establish CERTs/CSIRTs
  - Sensitization and capacity building

- Collaboration of ECOWAS Commission
  - Continue its regional and international partnership for the implementation of its cybersecurity agenda
THANK YOU!
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