

Cooperation criminal justice authorities and service providers:

International legal frameworks

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Budapest Convention: a global framework for cooperation on cybercrime

Budapest Convention on Cybercrime:

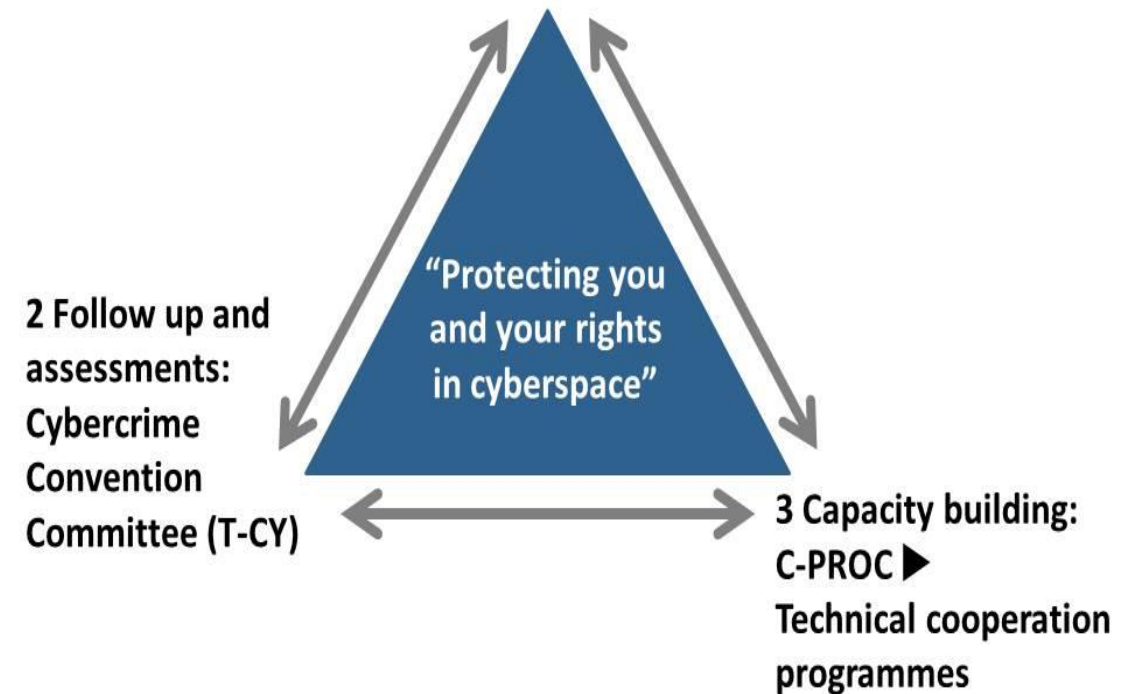
1. Specific offences against and by means of computer systems
2. Procedural powers with safeguards to investigate cybercrime and collect electronic evidence in relation to any crime
3. International cooperation on cybercrime and e-evidence

+ Guidance Notes

+ Protocol on enhanced international cooperation and access to evidence in the cloud under negotiation

By 29 Sep 2020: 65 Parties and 12 Observer States

1 Common standards: Budapest Convention on Cybercrime and relates standards



Budapest Convention ► Facilitating global public/private cooperation

- **“Informal” Guidelines on LEA/ISP cooperation 2008**
- **Article 18 (Production orders): legal basis for direct requests to service providers (see**
- **Confidence that States that are Parties have laws and safeguards in place**
- **Capacity building activities**
- **Additional Protocol under negotiation:**
 - **Direct cooperation with service providers to obtain subscriber information**
 - **[Legal basis for disclosure of WHOIS registrant data]**

Issue: Voluntary disclosure [of subscriber information] by service providers

Current practices:

- More than 170,000 requests/year by BC Parties/Observers to major US providers
- Disclosure of subscriber information (ca. 64%)
- Providers decide whether to respond to lawful requests and to notify customers
- Provider policies/practices volatile
- Data protection concerns
- No disclosure by European providers
- No admissibility of data received in some States

► Clearer / more stable framework required

Draft Article on “Direct disclosure of subscriber information”

- Criminal investigation: competent authority to issue an order directly to a service provider in another Party
- Parties to adopt measures for a service provider to disclose subscriber information
- Information to be specified in the order
- Possibility to require additional information
- Option for Parties to require notification

Budapest Convention on Cybercrime ► Coming soon: 2nd Additional Protocol

Negotiation of the 2nd Additional Protocol to the Budapest Convention on enhanced international cooperation and access to electronic evidence in the cloud

- Protocol prepared by the Cybercrime Convention Committee (T-CY)
 - Protocol Drafting Group
 - Protocol Drafting Plenary
 - Sep 2017 – Dec 2020
- Elements under consideration
 - Provisions for more efficient MLA
 - Expedited cooperation in emergencies
 - Direct cooperation with providers in other jurisdictions
 - Data protection safeguards

November 2021:
20th anniversary of the Budapest Convention
+ Opening for signature of the new Protocol?