

Third Annual PILON Cybercrime Workshop  
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**Direct cooperation with service providers in other jurisdictions**

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**Challenge: e-evidence on ANY crime**

**Cybercrime**

- ▶ Offences against computer systems and data
- ▶ Offences by means of computer systems and data

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**Electronic evidence**

- ▶ Any crime may involve evidence in electronic form on a computer system
- ▶ Needed in criminal proceedings
- ▶ No data, no evidence, no justice

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## Assessment of international cooperation under the Budapest Convention (2014)

### International requests for data

#### Types of data requested:

1. **Subscriber information (80+%?)**
2. **Traffic data**
3. **Content data**

#### Underlying offences

1. **Fraud and other financial crimes**
2. **Violent and serious crime (murder, assault, trafficking, child abuse etc.)**
3. **Offences against computer systems**

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## Cybercrime and e-evidence: the problem of territory and jurisdiction

Where is the crime?  
 Where is the data, where is the evidence?  
 Who has the evidence?  
 Where is the boundary for LEA powers?



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## Crime and jurisdiction in cyberspace ► Solutions

Direct cooperation with service providers in other jurisdictions to obtain:

- Subscriber information
- Any data in emergency situations

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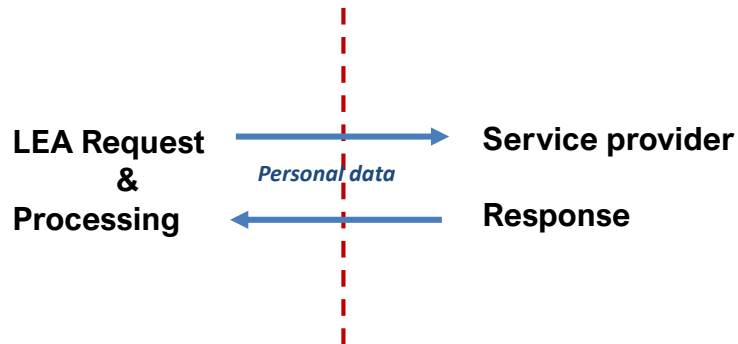


## Current system of direct requests to providers

<i>Parties and Observers (70 States)</i>	Requests for data directly sent to Apple, Facebook, Google, Microsoft, Twitter and Oath in 2017		
	Received	Disclosure	%
Albania	27	14	53%
Australia	6 555	4 543	69%
Belgium	2 521	2 301	91%
Croatia	196	166	85%
France	29 400	18 466	63%
Germany	35 596	20 172	57%
Mauritius	2	0	0%
Morocco	30	18	59%
Portugal	3 569	2 394	67%
Senegal	2	0	0%
Turkey	8 618	4 739	55%
United Kingdom	31 954	23 073	72%
<b>Total (excluding USA)</b>	<b>170 680</b>	<b>109 093</b>	<b>64%</b>

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## Direct asymmetrical cooperation



Legal basis for processing? For transborder transfers?

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## Direct cooperation with providers: some issues

- ECtHR: Case of Benedik vs. Slovenia (T-CY Discussion paper)
- Issues to addressed in domestic law:
  - Is subscriber information related to dynamic IP addresses „traffic data“?
  - Are dynamic IP addresses always linked to a specific communication and thus protected by telecommunication secrecy?
  - Data protection rules:
    - Is voluntary cooperation permitted?
    - Risks for providers?
- Admissible as evidence?
- Sovereignty/territoriality and reciprocity

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## Direct cooperation with providers: some issues

Direct cooperation with providers ► Practical measures (e.g. single points of contact, arrangements with providers) helpful

but:

- Clearer domestic and international legal basis needed
  - Guidance Note Article 18 Budapest Convention
  - Protocol to the Budapest Convention on Cybercrime

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## Solutions : Guidance Note on Production Orders

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

- **Domestic production orders for subscriber information 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)**
- **Foresee this in your domestic law**

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## Protocol to the Budapest Convention on Cybercrime

### A. Provisions for more efficient MLA

- Emergency MLA
- Joint investigations
- Video conferencing
- Language of requests
- Etc.

### B. Provisions for direct cooperation with providers in other jurisdictions

### C. Framework and safeguards for existing practices of extending searches transborder

### D. Safeguards/data protection

#### Negotiations:

Start - Sep 2017

End - 2020?