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Cybercrime Convention Committee (T-CY)

T-CY Guidance Note # 1

On the notion of “computer system”

Article 1.a Budapest Convention on Cybercrime

Adopted by the T-CY at its 8th Plenary (December 2012)

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1 Introduction

The T-CY at its 1st meeting (Strasbourg, 20-21 March 2006) discussed the scope of the definition of "computer system" in Article 1.a Budapest Convention in the light of developing forms of technology that go beyond traditional mainframe or desktop computer systems.

Since the time of the drafting of the Convention new devices were developed such as modern generation mobile phones or "smart" phones, PDAs, tablets, and others that produce, process or transmit data. There has thus been a need to discuss whether these new devices are included in the concept of "computer system" of the Budapest Convention.

T-CY, in 2006, agreed that these devices were covered by the definition of "computer system" of Article 1.a.

The present Guidance Note states this common understanding of the Parties as reflected in the report of the 1st meeting (document T-CY(2006)11).

2 Article 1.a. Budapest Convention on Cybercrime (ETS 185)

Text of the Convention

Article 1 – Definitions

For the purposes of this Convention:

- a "computer system" means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

Extract of the Explanatory Report

23. A computer system under the Convention is a device consisting of hardware and software developed for automatic processing of digital data. It may include input, output, and storage facilities. It may stand alone or be connected in a network with other similar devices "Automatic" means without direct human intervention, "processing of data" means that data in the computer system is operated by executing a computer program. A "computer program" is a set of instructions that can be executed by the computer to achieve the intended result. A computer can run different programs. A computer system usually consists of different devices, to be distinguished as the processor or central processing unit, and peripherals. A "peripheral" is a device that performs certain specific functions in interaction with the processing unit, such as a printer, video screen, CD reader/writer or other storage device.

24. A network is an interconnection between two or more computer systems. The connections may be earthbound (e.g., wire or cable), wireless (e.g., radio, infrared, or satellite), or both. A network may be geographically limited to a small area (local area networks) or may span a large area (wide area networks), and such networks may themselves be interconnected. The Internet is a global network consisting of many interconnected networks, all using the same protocols. Other types of networks exist, whether or not connected to the Internet, able to communicate computer data among computer systems. Computer systems may be connected to the network as endpoints or as a means to assist in communication on the network. What is essential is that data is exchanged over the network.

3 T-CY statement on the notion of "computer system" (Article 1.a. Budapest Convention)

Article 1.a of the Convention defines "computer system" as any "device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data".

The T-CY agrees that this definition includes, for example, modern mobile telephones which are multifunctional and have among their functions the capacity to produce, process and transmit data, such as accessing the Internet, sending e-mail, transmitting attachments, upload contents or downloading documents.

Similarly the T-CY recognises that personal digital assistants, with or without wireless functionality, also produce, process and transmit data.

The T-CY underlines that, when these devices perform such functions, they are processing "computer data" as defined by Article 1.b. Furthermore, the T-CY considers that when they perform these functions they create "traffic data" as defined by Article 1.d.

Therefore, in processing such data, they are acting as a "computer system" as defined in Article 1.a.

The T-CY agrees that this is consistent with the interpretation of "computer system" set forth in the Convention's Explanatory Report and that the Convention is intended to cover these devices in that capacity.

4 Conclusion

T-CY agrees that the definition of "computer system" in Article 1.a covers developing forms of technology that go beyond traditional mainframe or desktop computer systems, such as modern mobile phones, smart phones, PDAs, tablets or similar.