The Council of Europe and Cybersecurity

Prof. Mr. H.W.K. Kaspersen
Council of Europe/Computer/Law Institute-Amsterdam

www.coe.int/cybercrime
Council of Europe

- 47 Member States
- Build around Rome Treaty 1950
  - Rule of Law
  - Human rights
- International co-operation
  - Numerous areas:
    - From Racism and Data protection to Trafficking in human beings and Terrorism
    - Standing Tradition of Treaty Making: over 200
    - Ample experience International Criminal Law
      - Extradition
      - Mutual Assistance
      - Transfer of Proceedings
      - Recognition of foreign court decisions
2001: Cybercrime Convention

- Ambit of global aspiration
  - USA, Canada, Japan, South-Africa
  - Signatories:
    - Includes European Union
    - Includes G7
  - Signatories: 44, of which
  - Ratifications: 23
    - Potentially one of the Best Performing CoE Treaties
More global aspiration

- Model Law Function
- Accession by Third Parties
  - Wide range of potential Parties
    - Costa Rica, Mexico, Philippines have been invited to accede
    - Legislative amendments (about to be) adopted in many other countries inspired by the Convention (Argentina, Brazil, Caribbean countries, Colombia, Dominican Republic, Egypt, India, Indonesia, Nigeria, Philippines, Sri Lanka etc.)
    - Accession to the Convention under consideration
  - Assistance by CoE
  - Requests for Accession
  - Consent of Sitting Parties
Aims of the Cybercrime Convention

• Harmonisation of substantive criminal law
  – No data havens!
  – Dual criminality
  – Cybercrime in narrow sense
  – Cybercrime in broader sense

• Harmonisation of investigative powers
  – Capacity to collect electronic evidence
  – Preservation power
  – Production of data, including traffic data
  – Internet surveillance
Aims CCC- cont’d

• International co-operation
  – On the basis of the Convention
  – Existing bi- and multilateral instruments
  – Expedited assistance
    • Through: 24/7 contact points (integrated with G8-network)
    • MLA: preliminary measures, modern means of communication
CCC perfect solution?

- Problem areas
  - Extraterritorial Jurisdiction
    - Art. 22 CCC reasonably in place but....
  - Executive Jurisdiction
    - Art. 32 CCC: extraterritoriality highly controversial, but.....
- Lack of sense Sense of Urgency?
  - Very low rate of solved cases
  - Emphasis on Domestic cases
Additional measures CoE

- Cybercrime Project
  - Co-ordination
  - Consultation with industry (Codes of Best Practice, co-operation with LEA)
  - Exchange of experience, methods and tools: 24/7, specialised LEA-units
  - Training, legal advice
  - Development of new concepts: TC-CY
Supporting the CCC

- European Union
- Industry
  - Software
  - Security
- UN
  - Bangkok Summit 2005
  - IGF Rio de Janeiro 2007
- ITU
  - ?
Concluding Observations

• Need to move forward with full energy:
  – Technology does not wait
  – International co-operation should be improved
• Support from (inter)national bodies and institutions indispensable
• Launching alternative legal instruments is counterproductive, may cause confusion and slows down the process
  – If CCC could be considered as a wheel…
  – CCC should be recognised as the global instrument and achievement
  – CCC is an adequate vehicle for improvement of international co-operation
• ITU: invite State Parties to sign and ratify CCC