



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

Commission on E-Business, IT and Telecoms

Task Force on Cybercrime / Cybersecurity

ICC recommendations to signatory states to contemplate when implementing the Council of Europe Cybercrime Convention and its First Additional Protocol

The International Chamber of Commerce has actively represented its members during the negotiations on the Council of Europe's Convention on Cybercrime (Convention) and its First Additional Protocol (Protocol). ICC has submitted comments to the Council of Europe on several occasions during 2000-2002 and attended the Parliamentary Assembly hearing on the Convention in 2001. ICC greatly appreciates the attempts of the negotiators to address many of our members' concerns.

International business is committed to cooperate with law enforcement in a manner consistent with business realities. Appropriate cooperation between business and law enforcement is essential to enhance the security of the Internet -- a necessary step in ensuring its viability as a medium to conduct commerce. Therefore, international business welcomes the opportunity to work with governments as they begin to implement the Convention and its first additional Protocol into their domestic law. In addition, ICC Commercial Crime Services cybercrime unit is in a position to act as a focal point for the receipt and dissemination of either incidents or attacks of cybercrime to industry, law enforcement authorities, and law and policy makers in government.

As a first step in this process, ICC would like to recommend several issues for signatory states to consider when implementing the Convention and/or its Protocol:

1. Prevent conflicting privacy and security obligations on business while accommodating effective criminal investigation and prosecution.
2. Identify the appropriate circumstances for corporate liability.
3. Limit, in law, the liability of service providers in a manner that balances the interests of all parties including copyright owners, communications service providers and users. The U.S. Digital Millennium Copyright Act (DMCA), EU Copyright Directive and the EU Directive on certain legal aspects of information society services are good examples of an appropriate balance in limiting liability of service providers for copyright infringements of third parties.
4. Ensure consistency between the "misuse of devices" provisions of the Convention and existing law concerning "anti-circumvention", such as the DMCA and the EU Directive on the harmonization of certain aspects of copyright and related rights in the information society (EU Copyright Directive)

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5. Adopt clear procedural safeguards for the interception, preservation, production and seizure of data, which would ensure the efficient and expeditious response to law enforcement requests, including a safe harbor for cooperation with law enforcement resulting from the implementation of the Convention.
6. Provide for reimbursement for costs of compliance incurred by the private sector for lawful requirements imposed through the implementation of the Convention.
7. Maintain the criminalization of copyright infringements.
8. Distinguish the intent of Internet content from any potential reaction or result. For instance, the purpose of offering or distributing a film with racist content through a computer system might be to historically account for or comment on a particular issue but such film could infer or incidentally advocate, promote, or incite acts of violence.

ICC hopes that these comments are helpful and stands ready to assist signatory states in the important exercise of implementing the Convention and/or its Protocol.