

**CYS 2310**

**Policy, Legal, Ethics and Compliance**

**Lecture #5**

**International legal frameworks for combating cybercrime**

## Learning Objectives

In this chapter, we will cover the following topics:

- ✓ Procedural and enforcement provisions
- ✓ International cooperation
- ✓ International Standards
- ✓ MLA process involving electronic evidence
- ✓ Expediting the MLA process



## Procedural and enforcement provisions

### Electronic evidence

- Traditional criminal procedural laws typically contain provisions on the gathering and admissibility of evidence.

### Fragile nature

- Easily altered, damaged or destroyed by improper handling or improper examination. Special precautions to document, collect, preserve and examine this type of evidence.
- Admissibility of electronic evidence in courts.

## Procedural and enforcement provisions

### Investigative powers and measures

- Obtaining evidence of cybercrime requires a combination of both traditional and new investigation techniques.
- While legal approaches vary, key investigative powers include search and seizure, orders for computer data, real-time collection of data and data preservation.

### Jurisdictional issues

- Need for flexibility and establishment of different jurisdictional bases (transnational nature of cybercrime)

## International cooperation

### Mutual legal assistance involving electronic evidence:

- Crimes involving electronic evidence pose unique challenges for international cooperation.
- Owing to the **volatile nature of electronic evidence**, international cooperation to combat cybercrime requires a **timely response** and the ability to request specialized investigative actions, including the **preservation and production of data by private sector providers**.

## International cooperation

### **Mutual legal assistance involving electronic evidence:**

- Response times for mutual legal assistance requests involving the investigation of cybercrime may often fall outside service providers' data retention periods or may enable perpetrators to permanently destroy key digital evidence.
- Effective international cooperation in cases involving electronic evidence therefore requires **mechanisms for the expedited preservation of data pending the consideration of further investigative measures.**

## International Standards

### **Binding multilateral instruments**

- Both ad hoc instruments on cybercrime of regional impact and instruments of international cooperation in criminal matters (also to combat cybercrime).
- Council of Europe Convention on Cybercrime: benchmark of international standards.
- The issue of the necessity of a global instrument still open.
- Applicability of UNTOC, when necessary conditions are met. Broad scope of international cooperation provisions

## Capacity-building

### **Technical assistance for different groups: policy-makers and legislators; criminal justice and law enforcement personnel; central authorities**

- UNODC Global Program on Cybercrime
- Training courses for prosecutors, investigators and law enforcement authorities on electronic evidence and cybercrime investigations
- UNODC Cybercrime Repository
- MLA Request Writer Tool (with a separate module on electronic evidence)



## Capacity-building

### **Centralized cybercrime structures or units**

- Specialization of national law enforcement authorities in the investigation of cybercrime (or even “conventional” crime involving electronic evidence)
- Concentration of resources in a single place to build capacity on specialized investigation techniques and to adequately gather and analyze electronic evidence
- Further training provided by such structures or units to other local law enforcement agencies

## MLA process involving electronic evidence

### **Mutual Legal Assistance Request Writer Tool:**

- Tool to provide guidance to practitioners through each step of the drafting process of a mutual legal assistance request.
- The advantage offered by the tool is that the necessary information is saved in order to generate, at the final stage, the draft request in a format ready for signature and submission.

## MLA process involving electronic evidence

### **Mutual Legal Assistance Request Writer Tool:**

- Usefulness of the tool as:
  - A practical guide for practitioners from developing countries which could accelerate the submission of MLA requests; and
  - As a way to generate a format of requests that could be accepted by counterparts in developed countries acting as requested States.

## Expediting the MLA process

### Revised version of the Mutual Legal Assistance Request Writer Tool:

- **Electronic evidence module**
- **Expedited preservation of stored computer data**
  - Order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of the Requested State and in respect of which there is the intention to submit a formal request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.

## Expediting the MLA process

### Revised version of the Mutual Legal Assistance Request Writer Tool:

- **Electronic evidence module**
- **Ensuring access to stored computer data**
  - Search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the Requested State, including data that has been preserved.

## Expediting the MLA process

### Revised version of the Mutual Legal Assistance Request Writer Tool:

- **Electronic evidence module**
- **Real-time collection of traffic data**
  - Real-time collection of traffic data associated with specified communications in the territory of the Requested State transmitted by means of a computer system.

# Review

- **Procedural and enforcement provisions**
- **International cooperation**
- **International Standards**
- **MLA process involving electronic evidence**
- **Expediting the MLA process**

# End of Lecture