



Convicting More Cyber Criminals

A Report from the EastWest Institute
Breakthrough Group on **Modernizing International
Procedures against Cyber-enabled Crimes**

October 2015

Convicting More Cyber Criminals: Faster, Better Responses to International Law Enforcement Assistance Requests in Connection with Cyber-enabled Crimes through **Corporate Transparency Notices** and **Online Tool for Authoring Assistance Requests**

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Introduction

Crimes committed in and through cyberspace continue to increase in number and severity. Annual economic losses exceed \$375 billion with several hundred million individuals and companies falling victim.¹ Yet prosecution and conviction of the perpetrators is rare, encouraging more criminals to engage in this kind of activity.

As part of the EastWest Institute's [Global Cooperation in Cyberspace Initiative](#), the EWI Breakthrough Group on Modernizing International Procedures against Cyber-enabled Crimes² is working to combat crime and criminals in cyberspace by improving cooperation among law enforcement agencies and with the private sector on a global basis. In 2015, the group has focused on:

1. Increasing the transparency of corporate policies responding to information requests from law enforcement.
2. Promoting a standard format for international information requests under mutual legal assistance procedures.³

Model Corporate Transparency Notice

This report addresses the first issue, responding to the challenge that law enforcement entities have in understanding and connecting with private companies that may be in possession of data relevant to an ongoing criminal investigation. While some companies have posted policies that guide law enforcement in these matters, most have not. Moreover, the posted policies vary widely in level of detail and clarity. To help remove these obstacles to effective investigation, the breakthrough group finalized the Model Corporate Transparency Notice (see pages 4-5) at its meeting in New York during the sixth [Global Cyberspace Cooperation Summit](#) on September 10, 2015.

¹ "[Net Losses: Estimating the Global Cost of Cybercrime](#)", Center for Strategic and International Studies, June 2014.

² EWI policy development occurs via "[breakthrough groups](#)." The cyber-enabled crimes breakthrough group includes participants from law enforcement agencies, companies, and civil society from the European Union, India, Nigeria, and the United States. It coordinates on an ex-officio basis with the Council of Europe. The group uses the term "cyber-enabled crime" instead of cyber crime because most "cyber" crimes today are simply ordinary crimes (trespassing, fraud, destruction of property, theft) enabled by connected information resources.

³ The procedures for international government-to-government requests for assistance on investigations are generally set out in [mutual legal assistance treaties](#) (MLATs).

The EastWest Institute recommends that private companies that may be in possession of data relevant to an ongoing criminal investigation post a policy based on the Model Corporate Transparency Notice.

Tool for Authoring Assistance Requests

With respect to the second issue, the breakthrough group is supporting and publicizing the work of the United Nations Office on Drugs and Crime ([UNODC](#)) in its work to redevelop the [Mutual Legal Assistance Request Writer Tool](#). EWI has surveyed existing and emerging tools that would create a standard format for information requests under mutual legal assistance (MLA) procedures. The UNODC tool is the most advanced. It is user-friendly, and it includes extensive material from national laws and regulations around the world that can assist law enforcement officials in preparing legally acceptable requests for assistance from foreign governments. While the tool has to date been used primarily in international anti-corruption investigations, it is now being updated to serve a wide array of requests.

One of the recommendations arising from the expert deliberations has been the importance of utilizing all available channels of cooperation, including informal police-to-police cooperation and regional networks before submitting mutual legal assistance requests. The MLA tool could encourage the user to exhaust these channels before submitting a formal MLA request, keeping in mind the need for timeliness in the submission of formal requests. To this end, the tool could further provide lists and links of focal points, networks or other channels.

The UNODC expert group that is reviewing the tool and guiding its redevelopment met in October 2015 in Vienna. In particular, the group discussed an extension of the tool to cover electronic or digital evidence, along with asset recovery. Members of the EWI breakthrough group participated in the meeting.

The EastWest Institute urges national law enforcement agencies to participate actively in developing the UNODC authoring tool.

The EastWest Institute commends the UNODC for its leadership, and strongly supports the incorporation of a robust digital evidence module in the MLA request tool, with special attention to providing guidance and assistance in complex and demanding MLA cases.

The EastWest Institute recommends that UNODC make the authoring tool public so it can be evaluated by companies and civil society organizations.

The three recommendations above are consistent with a variety of reports on improving the ability of law enforcement agencies to fight cyber-enabled crimes.⁴

⁴ See, for example, "[Internet Organised Crime Threat Assessment 2015](#)", Europol, September 2015. "[Data Beyond Borders: Mutual Legal Assistance in the Internet Age](#)," Global Network Initiative, January 2015; and, "[Liberty and Security in a Changing World](#)," President's Review Group on Intelligence and Communications Technologies, December 2013.

Model Corporate Transparency Notice

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The text of this model notice can be downloaded [here](#).

Purpose

These guidelines are for law enforcement officials seeking records from *CompanyName*. For private requests, including requests from civil litigants and criminal defendants, visit: www.abcd.gtld. Users seeking information on their own accounts should visit: www.efgh.gtld.

Policy

CompanyName assists law enforcement agencies in their investigations while protecting subscriber/user privacy consistent with our terms of service and as required by law and applicable privacy policies.

CompanyName's primary goal is to provide timely and accurate responses to all law enforcement and legal requests. Unless otherwise required, *CompanyName's* goal is to provide a response within XX business days of each request.

International Requests

We respond to legal requests from jurisdictions outside of *HostCountry* where we have a good faith belief that the response is required by law in that jurisdiction, affects users in that jurisdiction, and is consistent with internationally recognized standards. All such legal requests must be completed in English. A Mutual Legal Assistance Treaty request or Letter Rogatory may be required to compel disclosure of information.

On a voluntary basis, we may provide user data in response to valid legal process from non-*HostCountry* law enforcement agencies, if those requests are consistent with international norms, *HostCountry* law, *CompanyName's* policies, and the law of the requesting country.

Information We Collect and Maintain

In the course of conducting our business, we collect and maintain certain information and records about our subscribers and their activities, as detailed in our terms of use/privacy policies. For a detailed description of the information we collect and maintain, visit: www.jklm.gtld.

Records Access and Preservation

We will search for and disclose data that is specified with particularity in an appropriate form of legal process and which we are reasonably able to locate and retrieve. We normally retain *Types of Information* for a period of XXX days, consistent with legal requirements. We will take steps to preserve account records in connection with official criminal investigations for XXX days pending our receipt of formal legal process, unless applicable law provides otherwise.

Notification

Our policy is to notify people who use our service of requests for their information prior to disclosure, unless we are prohibited by law from doing so or in exceptional circumstances, such as child exploitation cases, emergencies or when notice would be counterproductive. We will provide delayed notice upon expiration of a specific non-disclosure period in a court order and where we have a good faith belief that exceptional circumstances no longer exist and we are not otherwise prohibited by law from doing so. Law enforcement officials who believe that notification would jeopardize an investigation should obtain an appropriate court order or other appropriate process establishing that notice is prohibited. If your data request draws attention to an ongoing violation of our terms of use, we will take action to prevent further abuse, including actions that may notify the user that we are aware of their misconduct.

Child Safety

We prioritize and report all apparent instances of child exploitation appearing on our site from anywhere in the world to the National Center for Missing and Exploited Children ([NCMEC](#)) and the International Center for Missing and Exploited Children ([ICMEC](#)), which cooperate with law enforcement authorities from around the world. If a request relates to a child exploitation or safety matter, please specify those circumstances (include relevant NCMEC report identifiers) in the request to ensure that we are able to address these matters expeditiously and effectively.

Emergency Requests

We are permitted to release *Types of Information* on an expedited basis in situations where there is an immediate danger of death, an immediate risk of serious bodily injury, or risk of imminent harm to a child. Proper legal process must be submitted after the emergency has subsided.

Cost Reimbursement

We may seek reimbursement for costs we incur when responding to requests. We do not charge for responses to legal process served by a government entity involving child exploitation. Where time allows, our policy is to discuss reimbursement with the requesting party before we incur any costs.

Submission of Requests

Online: Law enforcement officials may submit and track requests by requesting access at the link: www.pqrs.gtld. Please note that a government-issued email address is required to access this link.

Mail: You may write to us at

Phone: For further information, call: +XX-XXX-XXX-XXXX.

EastWest Institute

Global Cooperation in Cyberspace Initiative



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