

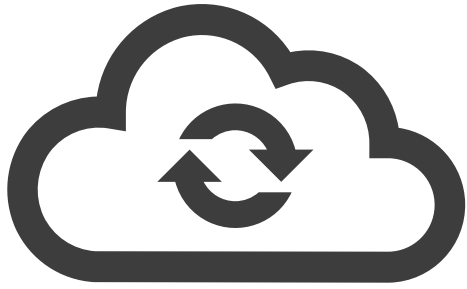


LAW ENFORCEMENT ACCESS TO CLOUD DATA

TERRITORIAL LIMITATION OF ENFORCEMENT JURISDICTION AND THE WAY FORWARD ON INTERNATIONAL LEGAL FRAMEWORK

DR. YOUNGJIN SONG

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Cloud Data



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CLOUD DATA



LOCATION
INDEPENDENCE



MULTI-JURISDICTION

CHALLENGES FOR LAW ENFORCEMENT



**LOSS OF
(KNOWLEDGE OF)
LOCATION**



**LIMITATION OF
MUTUAL LEGAL
ASSISTANCE**

CATEGORIZATION OF LAW ENFORCEMENT ACCESS TO DATA

DIRECT COLLECTION

Category	Legislation or Case
[1-1] Open-source data, data available online	Budapest convention Art.32(a)
[1-2] Data Collection through access authority(1) - Lawful and voluntary consent by data subject	Budapest convention Art.32(b) Supreme Court of Japan (2021)
[1-3] Data Collection through access authority(2) - Obtained account information during communications interception or search and seizure	Supreme Court of Denmark (2012) Supreme Court of South Korea (2017) Court of Appeal of Japan (2016)
[1-4] Data Collection through access authority(3) - Remotely access the server connected to the computer at the crime scene	Budapest Convention Art.19(2)
[1-5] Data collection through technical means such as hacking, malware, etc.	Network Investigative Technique (NIT) United States v. Gorshkov (2001)

CATEGORIZATION OF LAW ENFORCEMENT ACCESS TO DATA

INDIRECT COLLECTION

Category	Legislation or Case
[2-1] Production order to data subject or ISPs	Budapest Convention Art.18.1.a (any type of data) Budapest Convention Art.18.1.b (subscriber information)
[2-2] If provider is a local company and data is stored domestically	No jurisdictional issues raised
[2-3] If provider is a local company but data is stored in another jurisdiction	Google Pennsylvania case (2017) Microsoft Ireland case (2018) US CLOUD Act UK Crime Act 2019
[2-4] If provider is a foreign company and data is stored domestically	Data trust model (Microsoft Germany) If a domestic subsidiary or entity has access authority, domestic law can be applied.
[2-5] If provider is a foreign company and data is stored in another jurisdiction	Belgium Yahoo! Case (2015), Skype Case (2019) EU e-evidence proposal

FACTORS TO CONSIDER DURING THE DRAFTING PROCESS

Location of data

Consent of data subject

Nationality or location of data subject or data holder

Data collection method

Severity and urgency

Data protection



THANK YOU!

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