

WRITTEN CONTRIBUTION FROM MALAYSIA FOR A UNITED NATIONS
CONVENTION ON COUNTERING THE USE OF INFORMATION AND
COMMUNICATIONS TECHNOLOGIES FOR CRIMINAL PURPOSES

(Disclaimer) This contribution is without prejudice to any future contributions that Malaysia may make during the course of future discussions, including on the present chapters.

CHAPTER I - GENERAL PROVISIONS

Article 1

Statement of purpose

The purposes of this Convention are:

- a) To promote and strengthen measures to prevent and combat/counter cybercrime more efficiently and effectively;
- b) To promote and facilitate international cooperation;
- c) To support capacity building and technical assistance to enable Member States to strengthen their capacity to address cybercrime; and
- d) To ensure a proper balance between the interests of law enforcement and respect for fundamental human rights.

Article 2

Use of terms

For the purpose of this Convention:

- a) “child” means any individual under the age of 18;
- b) “competent authority” means a judicial, administrative or other law-enforcement authority that is empowered by domestic law to order, authorise or undertake the execution of measures under this Convention with respect to criminal investigations or proceedings;
- c) “computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, storage and display functions, and includes any data storage facility or communications facility

directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include an automated typewriter or typesetter, or a portable hand held calculator or other similar device which is non-programmable or which does not contain any data storage facility;

- d) “cybercrimes” means offenses established in accordance with this Convention;
- e) “data” means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;
- f) “function” includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer;
- g) “program” means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function;

Article 3

Scope of applications

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in this Convention
2. This Convention may also apply, where stated herein, to the collection of evidence in electronic form of a criminal offence.
3. The provision and conduct of technical assistance and capacity building on matters covered by this Convention.

Article 4

Protection of Sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non- intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction or performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

CHAPTER II – CRIMINALISATION AND LAW ENFORCEMENT

Article 5

Unauthorized access

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the unauthorized access of any kind by any person to any program or data held in a computer.

Article 6

Unauthorized interception

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the unauthorized interception of any kind by any person to any data or communications.

Article 7

Data interference

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration or alteration of computer data without right.
2. A State Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

Article 8

Obstruction of a computer, program or data

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the serious obstruction of a computer, program or data by interfering with, interrupting, suppressing, impeding, preventing access to or impairing.

Article 9

Misuse of data, program or computer

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and without right, the production, adaptation, sale, procurement for use, import, offer, distribution, supply or otherwise making available any data, program or computer.

Article 10

Offences related to child pornography

1. Establish as criminal offences, when committed intentionally and without right, the following conduct:
 - a) making, producing, directing the making of production of any child pornography for the purpose of its distribution through a computer system;
 - b) using or causing to be used a child in the preparation to make or produce, or in the preparation to direct the making or production of, or in the making or production of, or in the directing of the making or production of child pornography for the purpose of its distribution through a computer system;
 - c) exchanging, publishing, printing, reproducing, selling, letting for hire, distributing, exhibiting, advertising, transmitting, promoting, importing, exporting, conveying, offering or making available, through a computer system, any child pornography;
 - d) obtaining, collecting or seeking any child pornography through a computer system; or
 - e) participating in or receiving profits from any business that the person knows or has reason to believe is related to any child pornography through a computer system;
 - f) accessing, or has in the person possession or control, any child pornography through a computer system
2. For the purpose of paragraph 1, the term "child pornography", is as defined in Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Article 11

Attempt and aiding and abetting

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, abetting or participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.
2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 12

Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 13

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to

maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

CHAPTER III – CRIMINAL PROCEDURES AND LAW ENFORCEMENT

Article 14

Scope of procedural measures

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this chapter for the purpose of criminal investigations or proceedings.
2. Except as specifically provided otherwise, each State Party shall apply the powers and procedures referred to in paragraph 1 of this article to:
 - a) the criminal offences established in accordance with the offences defined in this Convention;
 - b) other criminal offences committed by means of a computer system; and
 - c) the collection of evidence in electronic form of a criminal offence.

Article 15

Production order

Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order a person in its territory to submit specified computer

data in that person's possession or control, which is stored in a computer system or a computer-data storage medium.

Article 16

Search and seizure of stored computer data

1. Each State Party shall adopt measures as may be necessary to empower its competent authorities to search for, seize and detain any such evidence and the competent authorities shall be entitled to any program or data held in any computer or have access to, inspect or check the operation of, any computer and any associated apparatus or material which the competent authorities have reasonable cause to suspect is or has been in use in connection with any offence under this Convention.

Article 17

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over offences established in accordance with this Convention when:
 - a) The offence is committed in the territory of that State Party; or
 - b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to the sovereignty article of this Convention, a State Party may also establish its jurisdiction over any such offence when:
 - a) The offence is committed against a national of that State Party; or
 - b) The offence is committed by a national of that State Party; or
 - c) The offence is committed against the State Party.
3. For the purposes of the extradition article of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other State Parties are conducting an investigation, prosecution, or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 18

Rights of victims

1. Each State Party shall establish appropriate procedures to provide access to compensation for victims of offences covered by this Convention.
2. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.