

Identifying Law Enforcement Needs for Access to Digital Evidence in Remote Data Centers

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State and local law enforcement increasingly need to obtain data and digital evidence held extraterritorially or by transnational companies in their investigations of local crimes. The challenges associated with this need are multifaceted, involving legal, procedural, and technical difficulties. The intent of this report is to describe the scope of the challenges, summarize the discussion of the expert panel surrounding the issues, and provide a list of needs identified and prioritized by the expert panel that will help inform the concerned communities and stakeholders. Ultimately, the goal of this report is to improve legitimate law enforcement access and use of remotely held digital evidence in a manner that is legal, effective, timely, and understandable.

Key Findings

Expert Panelists Discussed Challenges with Law Enforcement Access to Digital Data and Ranked Associated Needs

- Participants highly ranked needs related to facilitating better communication and understanding between law enforcement and service providers. These needs included calls for information exchanges for points of contact and on the types of data held by service providers, devices, and apps. Participants acknowledged that there is often an adversarial relationship between law

enforcement and providers and discussed means of developing a shared perspective and improving cooperation.

- Highly ranked needs also included better investigator access to information and training on requesting remote digital evidence. Several needs recommended creating databases and portals from which practitioners could exchange documentation and access standardized online training and best practices. Other needs called for the development of better standards for serving legal process and incentivizing research communities to keep methodologies for digital evidence acquisition current.
- Participants identified several needs related to improving the Mutual Legal Assistance Treaty (MLAT) process and ranked most of these needs in the upper-middle tier. Participants largely agreed that the current state of the MLAT process is inadequate to meet the growing need for law enforcement access to extraterritorial digital evidence. MLAT-related needs included the creation of an online docketing system, research and analysis on MLAT data to identify bottlenecks, the development of a uniform system of jurisdiction, better training and information for U.S. trainers of foreign nationals on U.S. law, and research on expanding the MLAT regime to cover current gaps.

Recommendations

- Create a portal or database for sharing information to facilitate ease of access to contact information for specialists and training for investigators on the creation and appropriate bounding of requests to providers for data.
- Provide better standards for the creation of and compliance with data requests served to providers. This would clarify the expectations of law enforcement and providers, remove ambiguity in the appropriate process or response, and mitigate investigative delays or unnecessary compliance burdens.
- Research methodologies for collecting digital evidence. Methodologies for digital evidence collection are constantly changing, and there is a need to keep the knowledge base current. Greater incentives, such as targeted grants and conferences dedicated to the subject, could be provided for research in this area.
- Improve communication with service providers. Investigators need to know who to talk to, what data they have, and what information should be included in requests to service providers to make those requests as simple as possible to comply with.
- Improve the MLAT process. A first step would be researching the bottlenecks that should be targeted for improvement. Other needs touched on better training for foreign liaisons who handle requests,

portals to provide stakeholders with visibility into the state of requests, and fixing gaps in the system where countries have no legal means to share evidence.

- Improve interstate data requests. Participants found there to be ambiguous legal authority and insufficient training for requesting data from other states. They suggested published standards and "how-to" guides to clarify the authority for these requests.

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