

Legal Frameworks for Hacking by Law Enforcement:

Identification, Evaluation and Comparison of Practices

optimityadvisors.com



CASE STUDY

Government law enforcement agencies and citizens have come to the realization that the legal rights and ramifications of surveillance and remote data access need to be reassessed.

THE CHALLENGE

Identifying and understanding the risks and legal implications faced when pursuing criminal activity in the digital age

The debate over encryption and the legality of unfettered government access to secured communications has become increasingly complex. Just one high profile example played out in the legal battle between Apple and the FBI in the aftermath of the San Bernardino shooting tragedy. As authorities searched for evidence on the suspected terrorist's iPhones, they demanded that Apple reveal the security codes necessary to unlock the devices, so they could access any incriminating information. An FBI court order ensued, Apple refused to budge, and cases of public safety and security vs. brand patents and consumer privacy officially moved quickly to the forefront.

Due to this new and evolving security landscape, government law enforcement agencies and citizens have come to the realization that the legal rights and ramifications of surveillance and remote data access need to be reassessed. As a result, the European Parliament recently commissioned Optimity Advisors to conduct important research into the tangible challenges government agencies face regarding hacking by law enforcement.

HOW WE HELPED

Through validated research Optimity has improved the collective intelligence of the EU and discovered a practical path to improvement

Optimity was retained by the European Parliament to conduct research to better understand the specific challenges—and the best way forward—for European governments to ensure the they: 1) keep up with and enforce the laws in relation to the use of hacking techniques; and 2) protect themselves, the privacy of their citizens and the security



How we helped (continued)

of the internet. Through an extensive consultation exercise covering a range of stakeholder groups and thought leaders at the EU level, across the six Member States covered by the study (France, Germany, Italy, the Netherlands, Poland and the UK) and the three non-EU countries covered (the US, Australia and Israel), the team identified and developed a hypothesis regarding the legal frameworks that govern the use of digital hacking by law enforcement agencies and examined the legality of techniques currently employed in these countries. Then, Optimity developed policy solutions that would bring these governments and their targeted data surveillance operations up-to-date with current privacy laws and the legal obligations they entail.

Subsequently, the team analyzed the data collected, and validated the findings in workshops, with the support of renowned experts Prof. dr. Bert-Jaap Koops, Gerben Klein Baltink, Carly Nyst, Prof. Bert-Jaap Koops and Ivan Skorvánek. From these workshop discussions, Optimity was able to develop recommendations, which led to the creation of twelve influential policy proposals.



RESULTS/IMPACT

Public policy has been reshaped and a respected voice in the areas of research and analysis has emerged to lead the way

Thanks to Optimity's thorough analysis, hypothesis validation and a credible solution-based approach to the challenge, Optimity was invited to present our findings to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) alongside Europol, Eurojust, the European Commission and prominent NGOs, including EDRi and Access Now. The success of that meeting has been overwhelming.

Most notably, the Optimity study has been cited in the Stanford Law Review by prominent academics Orin S. Kerr and Sean D. Murphy. In addition, the Optimity study has featured in the European Area of Freedom, Security and Justice blog, Italian law websites and journals, and the most recent academic report authored by the Associate Professor of Law at the Boston University School of Law, Professor Ahmed Ghappour.

While technology and data access continues to outpace the ability of law enforcement and the legal system to install the constitutional framework necessary to search phones, emails, and computers to solve criminal cases and prevent crimes, Optimity has identified the critical threats to government agencies and the most efficient and impactful way forward.



THANK YOU

There is always more to the story. For a more comprehensive discussion on this project or other Optimity Advisors' consulting services and solutions, please contact:

Quentin Liger, Senior Manager
Quentin.Liger@optimityadvisors.com

Mirja Gutheil, Principal
Mirja.Gutheil@optimityadvisors.com



Washington, D.C. • Berlin • Brussels • London • Los Angeles • Minneapolis • New England • New York • Zürich

Optimity Advisors is a global management consulting firm that helps organizations architect, build and launch human-centered strategies and solutions that embrace the complexities of our digital world.