



# **Cybercrime, Privacy, Spam and Online Child Safety: An Analysis of Current and Pending Laws in Asia Pacific**

**A Microsoft study**

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# Background to Microsoft's regional analysis of computer security, privacy, spam and online child safety laws

- Regional study of computer security, privacy, spam and online child safety laws
- Updated in October 2007
- Covers fourteen countries in the Asia Pacific region

Australia

Japan

South Korea

China

Malaysia

Taiwan

Hong Kong

New Zealand

Thailand

India

The Philippines

Vietnam

Indonesia

Singapore

- Domestic laws compared against benchmark legislation

# Overview of key findings

- Computer security

- ⇒ Area where legislative activity is the most prevalent in the Asia Pacific region

- ⇒ Area where domestic laws are most closely aligned with the benchmark legislation

- Privacy

- ⇒ 6 countries have laws that specifically deal with privacy and data protection

- ⇒ Varied scope and content of privacy laws

# Overview of key findings

- Spam

- ⇒ 7 countries have enacted comprehensive spam laws

- ⇒ Most countries have implemented an 'opt-in' regime

- Online child safety

- ⇒ Area where domestic laws are the least developed vis-à-vis the benchmark legislation

- ⇒ Limited specific regulation of child pornography

- ⇒ Only Australia, Hong Kong and Taiwan criminalise computer-facilitated dealings in child pornography

# Computer security benchmark legislation

- **Council of Europe Convention on Cybercrime (2001)**

- ⇒ **Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems**

- ← Illegal access
    - ← Illegal interception
    - ← Data interference
    - ← System interference
    - ← Misuse of devices

# Computer security benchmark legislation

- **Title 2 of the Convention on Cybercrime – Computer-related offences**

- ⇒ Computer-related forgery

- ⇒ Computer-related fraud

- **Title 5 of the Convention on Cybercrime – Ancillary liability and sanctions**

- ⇒ Attempt and aiding or abetting

- ⇒ Corporate liability

# Alignment of enacted computer security laws with benchmark legislation

Favourable alignment	Moderate alignment	Weak alignment
Australia	China	India
New Zealand	Hong Kong	Indonesia*
Singapore	Japan	
Taiwan	Malaysia	
Thailand	The Philippines	
	South Korea	
	Vietnam	

\* No computer security laws have been enacted.

## Observations – Jurisdictions with computer security laws that are favourably aligned with the benchmark legislation

- A common weakness involves the implementation of the Convention's misuse of devices offence
- In some cases, the scope of domestic legislation exceeds the requirements of the Convention

### Favourable alignment

Australia

New Zealand

Singapore

Taiwan

Thailand

## Observations – Jurisdictions with computer security laws that are moderately aligned with the benchmark legislation

- Not all of the provisions of Titles 1, 2 and 5 of the Convention are enacted in domestic legislation
- Where offences are enacted, they contain restrictions that mean that they apply more narrowly than their Convention counterparts

### Moderate alignment

China

Hong Kong

Japan

Malaysia

The Philippines

South Korea

Vietnam

## Observations – Jurisdictions with computer security laws that are weakly aligned with the benchmark legislation

- No comprehensive computer security laws that impose criminal liability
- Reliance on general criminal laws to regulate acts that compromise the confidentiality, integrity and availability of computer data and systems

**Weak alignment**

India

Indonesia

# Pending computer security laws

- Countries with pending computer security laws
  - ⇒ India
  - ⇒ Indonesia
  - ⇒ The Philippines

# Privacy benchmark legislation

## ■ Microsoft's Model Privacy Bill

⇒ Provisions relating to:

- ← Collection
- ← Use
- ← Disclosure
- ← Access and correction

⇒ Notification of material changes to information handling practices

⇒ Data breach notification

⇒ No restriction on transborder data flows

⇒ Special provisions for sensitive information

⇒ Enforcement by regulator

# Alignment of enacted privacy laws with benchmark legislation

## Favourable alignment

## Moderate alignment

## Weak alignment

Australia

Hong Kong

Japan

New Zealand

China\*

India\*

Indonesia\*

Malaysia

The Philippines

Singapore\*

South Korea

Taiwan

Thailand

Vietnam

\* No data protection laws have been enacted.

# Pending privacy laws

- Countries with pending privacy laws

- ⇒ China

- ⇒ India

- ⇒ Indonesia

- ⇒ Malaysia

- ⇒ South Korea

- ⇒ Taiwan

- ⇒ Thailand

# Spam benchmark legislation

## ■ Microsoft's anti-spam legislation checklist

- ⇒ 'Opt-out' regime
- ⇒ Coverage of email, SMS, MMS, pre-recorded voice messages
- ⇒ Laws should exclude transactional or relationship messages
- ⇒ Strong anti-fraud measures
- ⇒ Strong anti-harvesting measures
- ⇒ Effective enforcement by ISPs, email service providers and governments
- ⇒ Safe harbour for ISPs and email service providers

# Alignment of enacted spam laws with benchmark legislation

## Favourable alignment

Hong Kong

## Moderate alignment

Australia

China

New Zealand

Singapore

South Korea

## Weak alignment

India\*

Indonesia\*

Malaysia\*

The Philippines

Taiwan\*

Thailand

Vietnam

\* No spam laws have been enacted.

# Online child safety benchmark legislation

- **Title 3 of the Convention on Cybercrime – Offences related to child pornography**

- ⇒ producing child pornography for distribution through computer system

- ⇒ offering or making available child pornography through computer system

- ⇒ distributing or transmitting child pornography through computer system

- ⇒ procuring child pornography through computer system

- ⇒ possessing child pornography in a computer system or on a data storage device

# Online child safety benchmark legislation

- **Core elements of ICMEC's model child pornography legislation**

- ⇒ Legislation specific to child pornography
- ⇒ Definition of child pornography
- ⇒ Computer-facilitated child pornography offences
- ⇒ Criminalisation of mere possession of child pornography
- ⇒ Obligation on ISPs to report suspected child pornography to authorities

# Alignment of online child safety laws with benchmark legislation

## Favourable alignment

Australia

## Moderate alignment

Hong Kong

Japan

South Korea

Taiwan

## Weak alignment

India\*

Indonesia\*

Malaysia\*

New Zealand

The Philippines\*

Singapore\*

Thailand

Vietnam\*

\* No online child safety laws have been enacted.

# Pending online child safety laws

- Countries with pending online child safety laws

- ⇒ India

- ⇒ Indonesia

- ⇒ Japan

- ⇒ The Philippines

# Key trends and opportunities for reform

- There is significant variation in the extent to which the benchmark legislation has been implemented in the Asia Pacific region
  - ⇒ Many countries have enacted computer security laws that are at least moderately aligned with the Convention on Cybercrime
  - ⇒ There is limited adoption of online child safety and privacy laws
- Many jurisdictions with weakly aligned laws are considering proposals for legislative reform
- There appears to be a growing acceptance of the role international norms (such as the Council of Europe's Convention on Cybercrime) play in the law making process
- In areas of law where there is no international norm (eg privacy and spam) there appear to be greater inconsistencies among the domestic laws enacted in each jurisdiction

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## A Microsoft study

In the interest of the environment and because the content is subject to change regularly, Microsoft has not produced printed copies of this study. But, you can find the study at [www.microsoft.com/asia](http://www.microsoft.com/asia) .Or, please email me at [juliei@microsoft.com](mailto:juliei@microsoft.com) .