

MLAT reform and MLAT bypasses

Mutual legal assistance treaties (MLATs) are the primary system for law enforcement to gain access to data stored abroad. However, that system is failing due to increased law enforcement demand for data and the global disbursement of storage. Attempts by law enforcement to circumvent the MLAT process are threatening privacy, digital security, and the integrity of the internet. Any solution to the MLAT problem must (1) **improve efficiency** for lawful government requests, (2) **reduce incentives for government interference** with private sector platforms and networks, (3) **provide clarity** for users, governments, and companies on the treatment of user data, and (4) **ensure the system for cross-border data requests protects user rights**. Unfortunately, current proposals do not meet those goals.

Certain proposals to reform the system for cross-border requests would establish bi- or multilateral “safe harbor” agreements that would permit law enforcement to bypass MLATs and domestic laws to request data stored abroad directly from companies. One such [bypass proposal](#)^[1] would vest power in the U.S. government to reach agreements with allies to enable direct requests. The proposal, and others like it, do not appropriately account for the loss of protection from the country receiving the MLAT request or the heightened risk to privacy under cross-border data requests where data subjects are often located elsewhere. Instead, it would be governed by a U.S. general certification with review prohibited.

Requirements for MLAT reform

MLAT reform and bypasses must find ways to address the law enforcement shortcomings without sacrificing rights. Access Now has called for measures that improve the current system for cross-border data exchange while maintaining and improving upon existing protections by:

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- ▶ **ensuring human rights protections** throughout implementation of treaties, with appropriate accountability, remedy, authentication, and oversight in legal assistance,
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- ▶ **closing the gaps** via more MLATs, increased resources, electronic request forms, and a single, well-trained agency designated as a point of contact for each country, and
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- ▶ **clarifying the jurisdictional questions by using an analysis of factors, including location of the data, location of the entity holding the data, location of the data subject, and location of the victim or harm**. A country should be required to establish an intimate relationship with data to demonstrate jurisdiction.
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[1]
<https://www.accessnow.org/four-ways-new-proposal-bypassing-mlats-fails-human-rights/>

Requirements for a bypass

In addition, implementing an extraordinary mechanism designed to supplement MLATs could help. It must, however, be built from the ground up with necessary human rights protections and be strictly limited to situations where the use of the process is justifiable. Any MLAT bypass framework must:

- ▶ not center upon or favor the political interests of any one country,
- ▶ ensure the country making the request, in each instance, demonstrates its interest in the data,
- ▶ limit requests to particular crimes that depend on a speedy investigation and require individual requests must justify the use of the bypass,
- ▶ be based on existing international [human rights standards](#),^[2]
- ▶ be coupled with data protection and digital security standards, and
- ▶ prohibit the exchange of data outside official law enforcement processes, such as MLATs or the new mechanism itself.

The full blog series can be found at <https://www.accessnow.org>.

■ PART 1

We need to fix the broken system for cross-border access to data^[3]

■ PART 2

What's wrong with the system for cross-border access to data^[4]

■ PART 3

A diagnosis: Why current proposals to fix the MLAT system won't work^[5]

■ PART 4

How to fix MLATs — and a path toward resolving jurisdictional issues^[6]

■ PART 5

How to make an MLAT “safe harbor” safe for users^[7]

Contact

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[2] <https://necessaryandproportionate.org/>

[3] <https://www.accessnow.org/need-fix-broken-system-cross-border-data-access/>

[4] <https://www.accessnow.org/whats-wrong-system-cross-border-access-data/>

[5] <https://www.accessnow.org/diagnosis-current-proposals-fix-mlat-system-wont-work/>

[6] <https://www.accessnow.org/fix-mlats-path-toward-resolving-jurisdictional-issues/>

[7] <https://www.accessnow.org/make-mlat-safe-harbor-safe-users/>