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ORAL STATEMENT

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United Nations Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of ICTs for Criminal Purposes

Intervention on Groups 9, 10: Specifically Proposed Articles 6-10, 36 of the Draft Treaty

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Chair, thank you for providing us this additional opportunity to speak. In these remarks, Access Now will touch our comments on Groups 9 and 10, and the interventions made by delegations over today. My comments speak to two broad areas: (1) the importance of improving the language in Articles 6-10, and (2) the need to safeguard the important consensus that has emerged in the AHC process on ensuring strong data protection standards are baked into this treaty.

Firstly, on Group 9. As you have heard us and many other stakeholders and delegations mention, we have held the view that **this proposed treaty must be very narrowly focused in its scope of criminalisation, namely, on core cyber dependent crimes**. It has been our consistent view that the criminalisation of cyber dependent crimes by the proposed treaty require very clear safeguards to ensure that security researchers, digital security trainers, journalists, and human rights defenders more generally are not subject to harm. That harm could be explicit criminalisation, or by way of “chilling effect” by over broad or unclear legal terms. Despite the efforts of the chair and the helpful interventions made by many delegations, we believe that the final draft text for Articles 6 to 10 will cause harm unless it is improved.

We note the approach taken to persistently require the standard of “Committed intentionally and Without right” for all the cyber dependent crimes specified in chapter II of the current final draft text. We welcome this small step of progress; as we have consistently noted since the start of the negotiations, requiring a clear requirement of intent is a bare minimum obligation for the AHC. It is our belief that national cybercrime laws across all agreeing states should require a heightened **intent** requirement that is beyond **mere knowledge** in cases of unauthorized access to computer systems or databases.

A positive obligation must be cast on states to help protect and encourage the security researcher community, as well as ensure that cybercrime laws shield journalists and human rights defenders from the chilling effect of legal liability and criminalisation for. We must therefore recognise the reality that most security research and everyday vulnerability disclosure work is in the form of “Without authorisation” security research - at least in its initial stage.

Given that, the current language in Article 10(2) around authorized testing or protection of [a computer system] is not enough. We require broader language instead on good faith security research, This

language around the protection of good faith actions, including good faith security research and cybersecurity protection, would need to apply to other criminal provisions in this chapter as well. At a minimum, it would also need to either be duplicated in or applied to Article 6. The other alternative would be to make the original paragraph 2 of Article 6 be binding, after further improvement of its language to require a clear requirement of criminal intent.

Lastly, we welcome the support demonstrated by states today in safeguarding the commitment to including a data protection clause in this treaty in Article 36. As several states have noted, this treaty will not be adopted - and we indeed believe it should then not be adopted - if a strong data protection clause containing effective oversight, remedy, and accountability regarding cross border data transfers under this treaty are not advanced.

Thank you chair, delegates.



Access Now (<https://www.accessnow.org>) defends and extends the digital rights of people and communities at risk. As a grassroots-to-global organization, we partner with local actors to bring a human rights agenda to the use, development, and governance of digital technologies, and to intervene where technologies adversely impact our human rights. By combining direct technical support, strategic advocacy, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.

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