
POLICE OFFICERS, BLACK SUITCASES AND THE PROBLEM OF SHARING DIGITAL EVIDENCES

An interview with Angus Marshall and Tobias Mattes
By APWG.EU and EEMA

Digital evidences are extremely relevant for the investigation of crimes such as financial frauds, intellectual property theft, terrorism and even murders. Being these criminal activities mostly transnational, forensic investigators, Law Enforcement Agencies (LEAs) and judicial actors from different countries and jurisdictions have to cooperate to achieve successful prosecutions. Surprisingly enough, to date, the handling of digital forensic procedures across countries is not yet ruled by a unified criterion, not even within EU member states. This currently lacking standard procedure would not only alleviate cross-jurisdiction problems related to information sharing, but it would also increase the quality of digital forensic reports and facilitate their admissibility in courts of law. Experts in the field agree on the urgent need for harmonising digital forensic procedures within EU countries by implementing a unique framework with common standards, protocols and tools.



The internal bodies of the EU are well-aware of the problem, and the European Commission and the Council of Europe have proposed strategies to agree upon a standard. On the one hand, the European Commission promoted the European Investigation Order under the Directive 2014/41, an instrument aiming to facilitate and homogenise the exchange of data among different jurisdictions. On the other hand, the Council of Europe is fostering the implementation of the Budapest Convention, a powerful instrument providing a common cooperation-oriented framework among all the convention undersigned countries. At a global scale, the ISO standards provide guidance on the exchange, analysis and interpretation of digital evidence that any LEA or institution from all over the world could implement. Despite these efforts, Mr. Angus Marshall, lecturer at the University of York and director at [n-gate ltd](#), believes that there is still a lot of work to do in creating awareness among all the actors and stakeholders involved, especially lawyers and judges, who have little interest in (or knowledge of) any standards for forensic science. Marshall considers that further research to develop a standardised digital forensic procedure across the EU is crucial to make justice better and safer.

Although the need for standardising digital forensic data exchange procedures among countries is indisputable, there is still a long way to go until such a standard becomes a reality. Currently, the exchange of digital evidence requires that a police officer with a black suitcase travels from country A to country B and picks up or delivers a hard drive with data! This procedure is experienced by Mr. Tobias Mattes, police officer

at the Bavarian Police, over his daily duty, which requires interaction with colleagues from different countries working in transnational crime investigations. Under the umbrella of a standardised procedure, LEAs could move faster in their international crime investigations, and achieve more efficient and successful prosecutions sheltered by a common legal basis. Under this assumption, increased cooperation between international LEAs might dismantle terrorist networks operating within the EU in a more efficient way by combining knowledge and evidences from multiple bodies. Mattes predicts that a standardised solution might be realisable in the mid-term within the next 5 to 7 years, particularly thanks to the many related research projects funded by the EU H2020 programme. Notwithstanding, due to the current COVID-19 pandemic, LEAs refrain from putting innovations in place because their main focus is on remaining capable of acting, which may imply delaying the implementation of new standards.

New technologies such as blockchain, studied in the LOCARD project, can significantly contribute to enhance digital forensic procedures due to their integrity checks and immutability properties. LOCARD's ambition is to offer a holistic platform to cover all the workflow of the forensic procedure (from the collection of digital evidence to their reporting in a court of law) by accommodating independent users, jurisdictions and global regulations together with high security demands. The lack of systems allowing the exchange of digital evidence among EU member states in a common, secure and reliable manner sets the ground for LOCARD to be the catalyst implementing a standard procedure adopted in judicial systems. Such standards implemented in LOCARD are actively discussed within the LOCARD's consortium, its External Advisory Board and its network of stakeholders, who according to Marshall, can propose real-life use cases. In this line, Mattes believes that it is necessary to devote many efforts in presenting LOCARD in open workshops, specialist conferences and safety exhibitions, in addition to publishing the research results in scientific publications. Only if decision-makers and police authorities are convinced of the applicability of a system (e.g., LOCARDs), the EU could create a roadmap to achieve a standardised digital forensic procedure within the EU.

"Only if decision-makers and police authorities are convinced of the applicability of a system, the EU could create a roadmap to achieve a standardised digital forensic procedure within the EU"

As cybercrime knows no frontiers, in addition to the crimes committed within the EU, lots of crimes committed outside the EU have a direct impact on EU citizens and businesses. In some investigations, collaboration with non-EU countries is a must. In Mattes' experience, exchanging digital evidence with non-EU member states is often complex due to the difficulties in transmitting digital evidence and ensuring their integrity, in particular when both countries have different jurisdictions and use very different tools. Under a standardised procedure, data exchange issues would be mitigated, and cooperation would become smoother. Unfortunately, the EU

situation is far from the desired one, and the rest of the countries are even in worse places, Marshall believes. In the light of this situation, the EU should take the lead in this harmonization process and propose a standard to be applicable, not only within EU member states, but worldwide. Only time will tell.

Editor's Note: The opinions expressed by the experts are theirs only, and do not necessarily represent the official standing of their institutions.