

**EFF Oral Intervention on Criminal Procedural Measures Articles 41, 43 & 46(4), 47 & 48
Delivered By Katitza Rodriguez
Fourth Session - January 11th, 2023**

Dear Madame Chair,

The Electronic Frontier Foundation, jointly with Derechos Digitales and Red en Defensa de los Derechos Digitales, welcomes the opportunity to speak today.

Today, we will focus on Articles 41, 43 & 46(4), 47 & 48.

Article 41: Widening the scope of **all crimes committed with the use of ICT** significantly risks undermining human rights, including the right to privacy and the right to a fair trial. Due the expansive lists of crimes in Chapter I as of now, we recommend that the scope of procedural measures is limited to the investigation of the criminal offenses established in accordance with this Convention.

Article 43 should be amended to require a strong factual basis for using expedited preservation orders. We believe that criminal procedural measures interfere with human rights and fundamental freedoms. Therefore, these powers equally require specific safeguards.

We have concerns with the obligations imposed on Art. 46(4), which compel persons with special knowledge to provide technical assistance, which could include compelling security experts to disclose vulnerabilities of specific software or to provide relevant authorities with access to encrypted communications. Thus, we strongly recommend removing Article 46(4).

Imagine authorities are authorized to compel experts to exploit security flaws. In that case, authorities will more likely be incentivized to build an "arsenal" of security vulnerabilities to attack a target in the event of a criminal investigation.

This interest, in turn, will prevent authorities from notifying the affected provider, so the manufacturer can fix the security vulnerability that has been discovered. If such a vulnerability is fixed, authorities will not be able to attack the system.

Patching vulnerabilities are critical to keeping billions of people safe from criminal attacks. It's an essential preventive measure against cybercrime. Hence, keeping billions of people safe far outweigh the possible facilitation of prosecution in individual cases.

Thank you, madame chair