[ERRATA]

108TH CONGRESS *1st Session*	SENATE	TREATY DOC. 108–11

CONVENTION ON CYBERCRIME

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

COUNCIL OF EUROPE CONVENTION ON CYBERCRIME (THE "CYBERCRIME CONVENTION" OR THE "CONVENTION"), WHICH WAS SIGNED BY THE UNITED STATES ON NOVEMBER 23, 2001

NOVEMBER 17, 2003.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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principles concerning the division of powers in criminal justice matters" between its central government and its constituent entities. The reservation was inserted to make clear that the United States could meet its Convention obligations through application of existing federal law and would not be obligated to criminalize activity that does not implicate a foreign, interstate or other federal interest meriting the exercise of federal jurisdiction. In the absence of the reservation, there would be a narrow category of conduct regulated by U.S. State, but not federal, law that the United States would be obligated to criminalize under the Convention (e.g., an attack on a stand-alone personal computer that does not take place through the Internet). Article 41 makes clear that this reservation is available only where the federal state is still able to meet its international cooperation obligations and where application of the reservation would not be so broad as to exclude entirely or substantially diminish its obligations to criminalize conduct and provide for procedural measures. Such a restriction is not an obstacle for the United States because the Convention's international cooperation provisions are implemented at the federal level and because federal substantive criminal law provides for broad overall coverage of the illegal conduct addressed by the Convention. In invoking the reservation, the U.S. Government would be obliged to bring the Convention's provisions to the attention of its constituent States and entities, with a "favourable opinion" encouraging them to take appropriate action to give effect to such provisions, even though, as a result of the reservation, there would be no obligation for them to do so. This step would be accomplished through an outreach effort on the part of the federal government. Accordingly, I recommend that the following reservation be included in the U.S. instrument of ratification:

> The Government of the United States of America, pursuant to Articles 41 and 42, reserves the right to assume obligations under Chapter II of the Convention in a manner consistent with its fundamental principles of federalism.

Furthermore, in connection with this reservation, I recommend that the Senate include the following understanding in its resolution of advice and consent:

> The United States understands that, in view of its reservation pursuant to Article 41, Chapter II of the Convention does not warrant the enactment of any legislative or other measures; instead, the United States will rely on existing federal law to meet its obligations under Chapter II of the Convention.

Article 42 ("Reservations") enumerates those provisions by which a Party can exclude or modify its obligations with respect to specified articles at the time it consents to be bound by the Convention. Consistent with COE treaty practice, the Article provides that no other reservations may be made. Article 43 ("Status and withdrawal of reservations") provides a mechanism for Parties to withdraw their reservations as soon as circumstances permit. As set forth above, to meet its obligations without the need for additional implementing legislation, the United States would make permitted reservations under Articles 4(2), 6(3), 9(4), 10(3), 22(2), and 41.

The procedure for amending the Convention is set forth in Article 44 ("Amendments") and provides that amendments do not come

into force until they have been accepted by all Parties to the Convention. Article 45 ("Settlement of disputes") obligates Parties to