

**RE: A CALL FOR ALLOWING STAKEHOLDER INPUT TO THE AFRICAN UNION  
CONVENTION ON CYBERSPACE**

Dear AU Colleagues,

The Draft African Union Convention on the Confidence and Security in Cyberspace (“the AUCC”) is scheduled for final passage at an AU meeting in January 2014.

The AUCC, if passed in its current form, will have substantial negative effects to Africa’s online economy and social culture. We implore the AU to delay passage of the AUCC until private sector stakeholders have been given a formal opportunity to be heard.

At a minimum, we propose the following pointers for amendment to the AUCC:

- The peaceful online expression of permissible views, ideas, and theories on religion, ethnic origin, race, or colour should not be criminalized. As currently drafted, Article III-1 and Article III-34 can be interpreted to impose dangerously broad limitations on free speech.
- The AUCC provisions on e-commerce (Article I-4) require full disclosure of identity information between contracting parties, yet it remains unclear how such information will be verified and how confidentiality will be maintained. This will substantially increase the cost and risk of liability associated with online transactions, and will likely do great harm to the fledgling online economy in Africa. More problematic, however, is the lack of any basis for concluding that such provisions are the most effective and efficient means for achieving the AUCC’s stated goals. Ideally, e-commerce should be eliminated entirely from the AUCC, and dealt with in separate legislation. At a minimum, the private sector should be consulted to determine the most appropriate means for achieving the AUCC goals.
- The AUCC requires (Article III-21) that ICT product vendors submit products for “vulnerability and guarantee tests.” Such a requirement, although intended for protecting consumers, actually increases the risk to consumers. An ICT product vendor, having complied with the standardized testing required of the AUCC, can reasonably argue that such compliance completely eliminates their liability for security breaches of their products. Furthermore, standardizing security measures across all ICT products benefits criminals because vulnerabilities apply to a larger number of devices and systems. Ideally, such standardized testing should be eliminated from the AUCC.

- Articles III-50 and III-51 give broad and unchecked powers to “investigating judges”. Such powers include the power to issue search and seizure warrants for any electronic records that the judge considers to relevant to a crime (whether the crime is verified or merely suspected), as well as the power to hold such seized information for any period of time deemed necessary by the judge. Article III-55 gives judges almost unlimited power to order the interception in real time of transmitted messages (i.e., wiretapping and other surveillance measures). The judge has sole discretion to determine necessity and appropriateness of these broad powers. These provisions ignore the nearly ubiquitous lack of qualified investigative judges, omit any requirement for checking such authority or permitting appeals of such intrusive powers, and are highly likely to be subject to abuses of power.
- The AUCC poses a serious threat to the (Constitutional) right of Privacy. Article II-28(2) and Article II-36(9) permit the processing of personal and sensitive data by anyone acting on behalf of the state or any public institution on behalf of public interest and state security. These concepts have elusive meanings, and are not advised for use within legislation especially within the African context.

At a very minimum, cyber security experts and a wide selection of industry and non-government stakeholders should be given a chance to vet the AUCC. The process should be transparent and public.

A consortium of organizations have endorsed this movement including, among others, Google, ihub, iLabAfrica and CIPIT at Strathmore University.

Sincerely,

Center for Intellectual Property and Information Technology Law (CIPIT)  
Strathmore Law School