

***DATENTRANSFER IN DRITTSTAATEN UND
RECHTSDURCHSETZUNG NACH DER
DATENSCHUTZGRUNDVERORDNUNG***

TEIL 1: DRITTSTAATSTRANSFER (USA)

PRISM: FAKTEN



Hotmail

YAHOO!

Google



skype

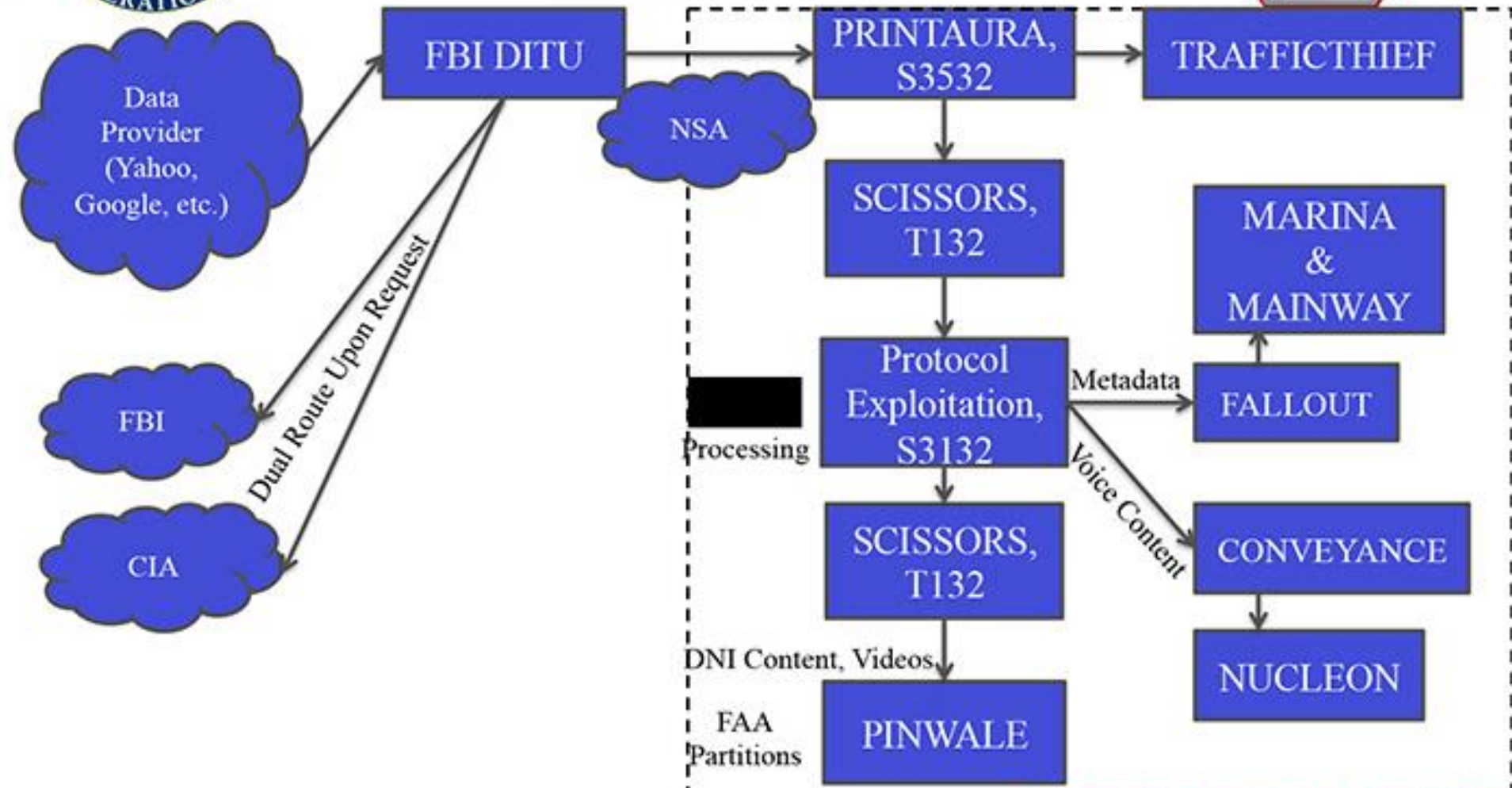
paltalk.com

YouTube

AOL mail



(TS//SI//NF) PRISM Collection Dataflow





Hotmail

YAHOO!

Google



skype

paltalk.com

YouTube

AOL mail



(TS//SI//NF) PRISM Case Notations



P2ESQC120001234

- PRISM Provider
- P1: Microsoft
 - P2: Yahoo
 - P3: Google
 - P4: Facebook**
 - P5: PalTalk
 - P6: YouTube
 - P7: Skype
 - P8: AOL
 - PA: Apple

Fixed trigraph, denotes PRISM source collection

Year CASN established for selector

Serial #

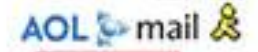
- Content Type**
- A: Stored Comms (Search)
 - B: IM (chat)
 - C: RTN-EDC (real-time notification of an e-mail event such as a login or sent message)
 - D: RTN-IM (real-time notification of a chat login or logout event)
 - E: E-Mail
 - F: VoIP
 - G: Full (WebForum)
 - H: OSN Messaging (photos, wallposts, activity, etc.)
 - I: OSN Basic Subscriber Info
 - J: Videos
 - . (dot): Indicates multiple types



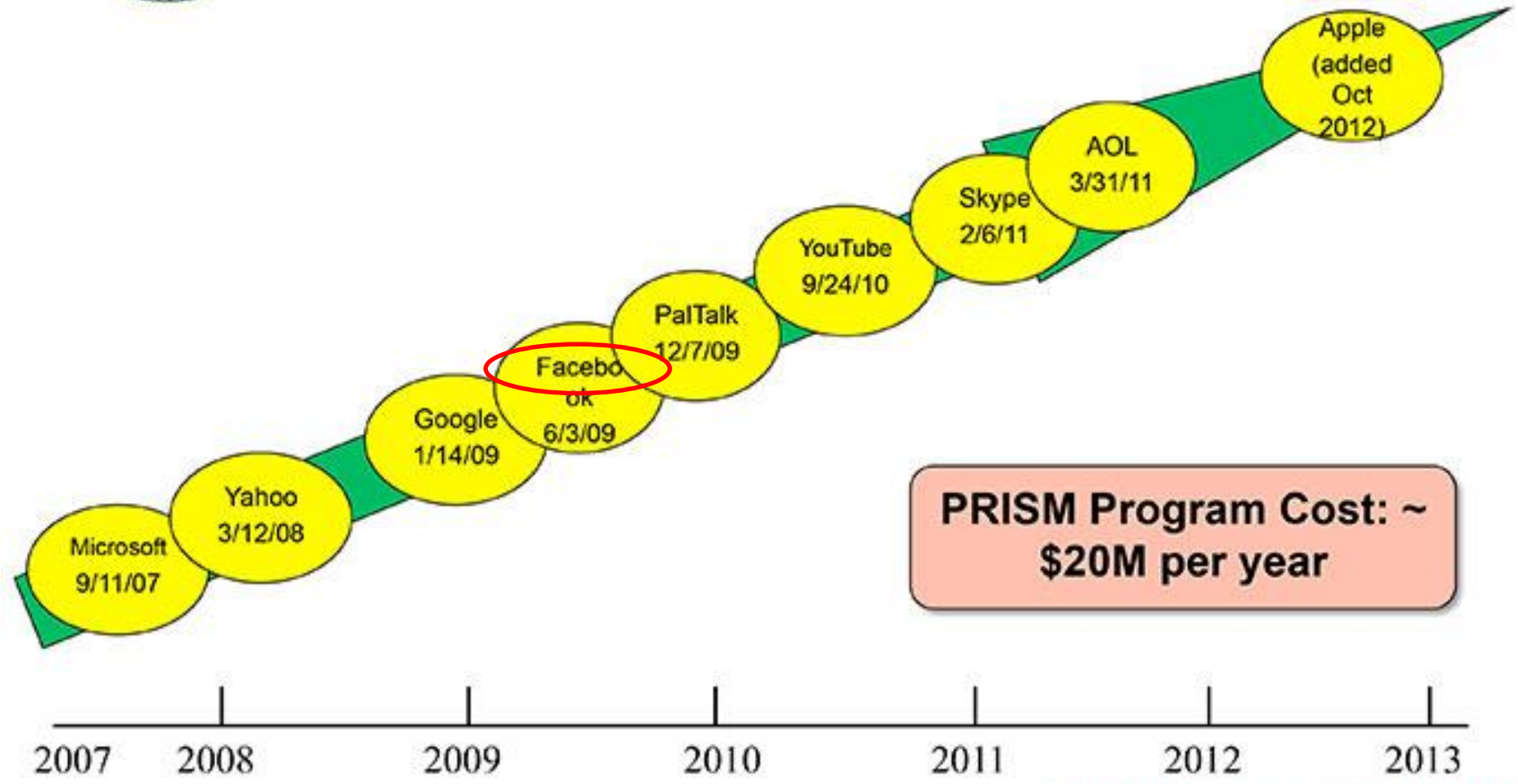
Hotmail



YAHOO!



(TS//SI//NF) Dates When PRISM Collection Began For Each Provider



PRISM Program Cost: ~ \$20M per year

FISA § 1881a

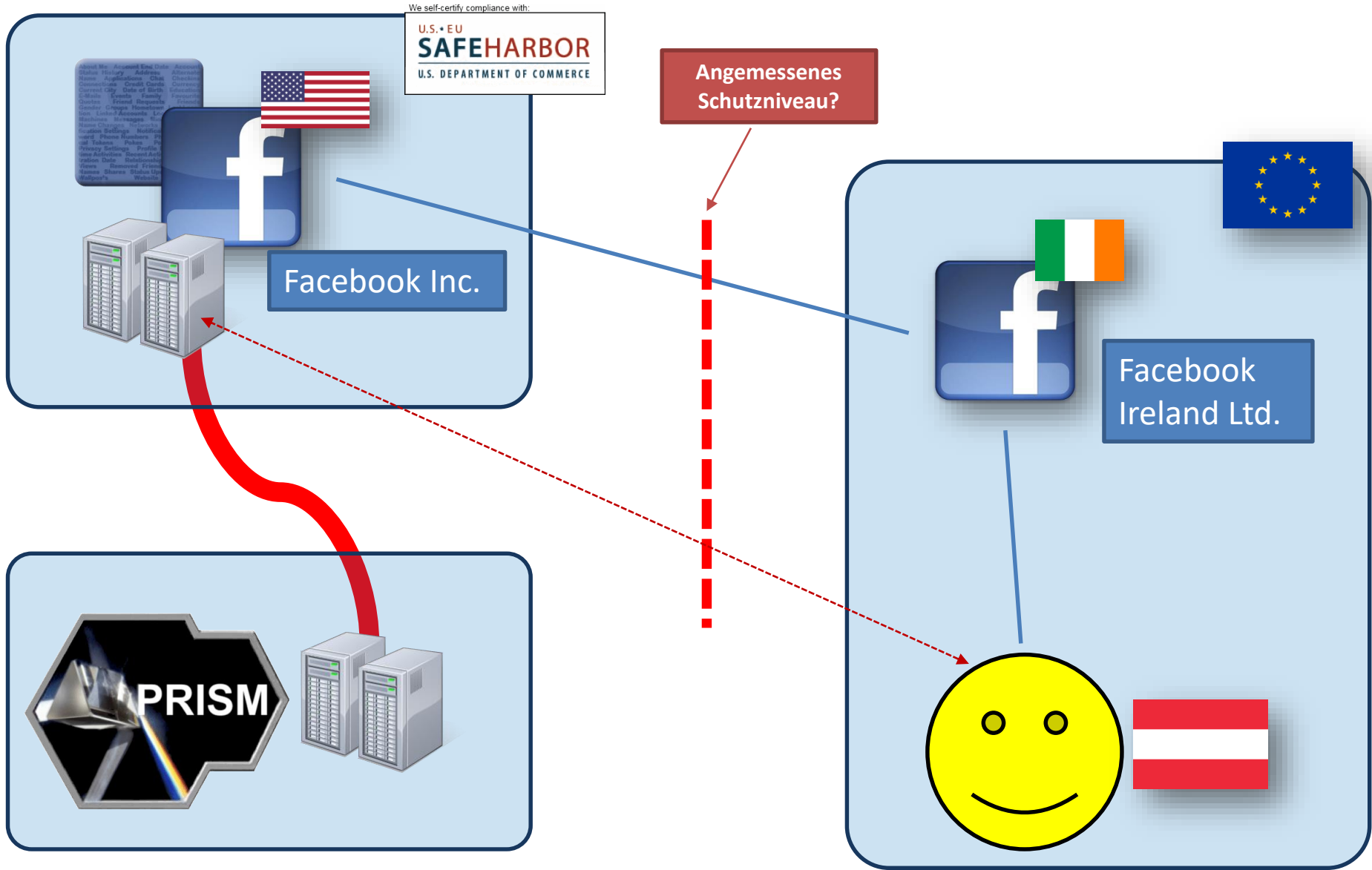


- **Electronic Communication Service Provider**
- **“Foreign Intelligence Information”**

CLASSIFIED

- **“Certification” für ein Jahr („FISA Court“)**
 - Minimizing / Targeting procedures (US persons)
- **“Directive” an den Service Provider**
 - API (?)

SAFE HARBOR: RECHTLICHE ARGUMENTATION

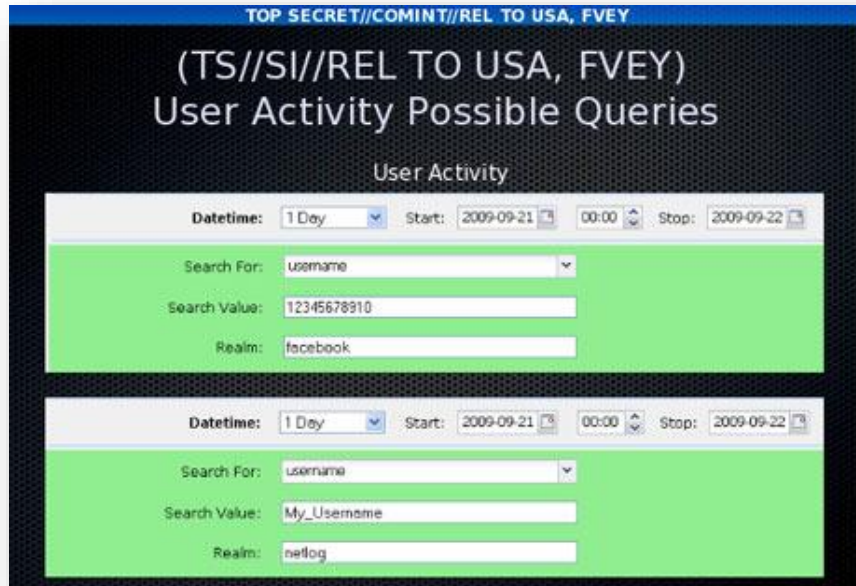


Art 7 & 8 GRC

- „PRISM“ -v- Vorratsdatenspeicherung
- Inhaltsdaten -v- Metadaten
- “Available” -v- Speicherung
- Endlos -v- 24 Monate
- ...

Art 8 GRC

- „Making Available“
 - EU Verhältnismäßigkeit



Eingriff *(vereinfacht)*

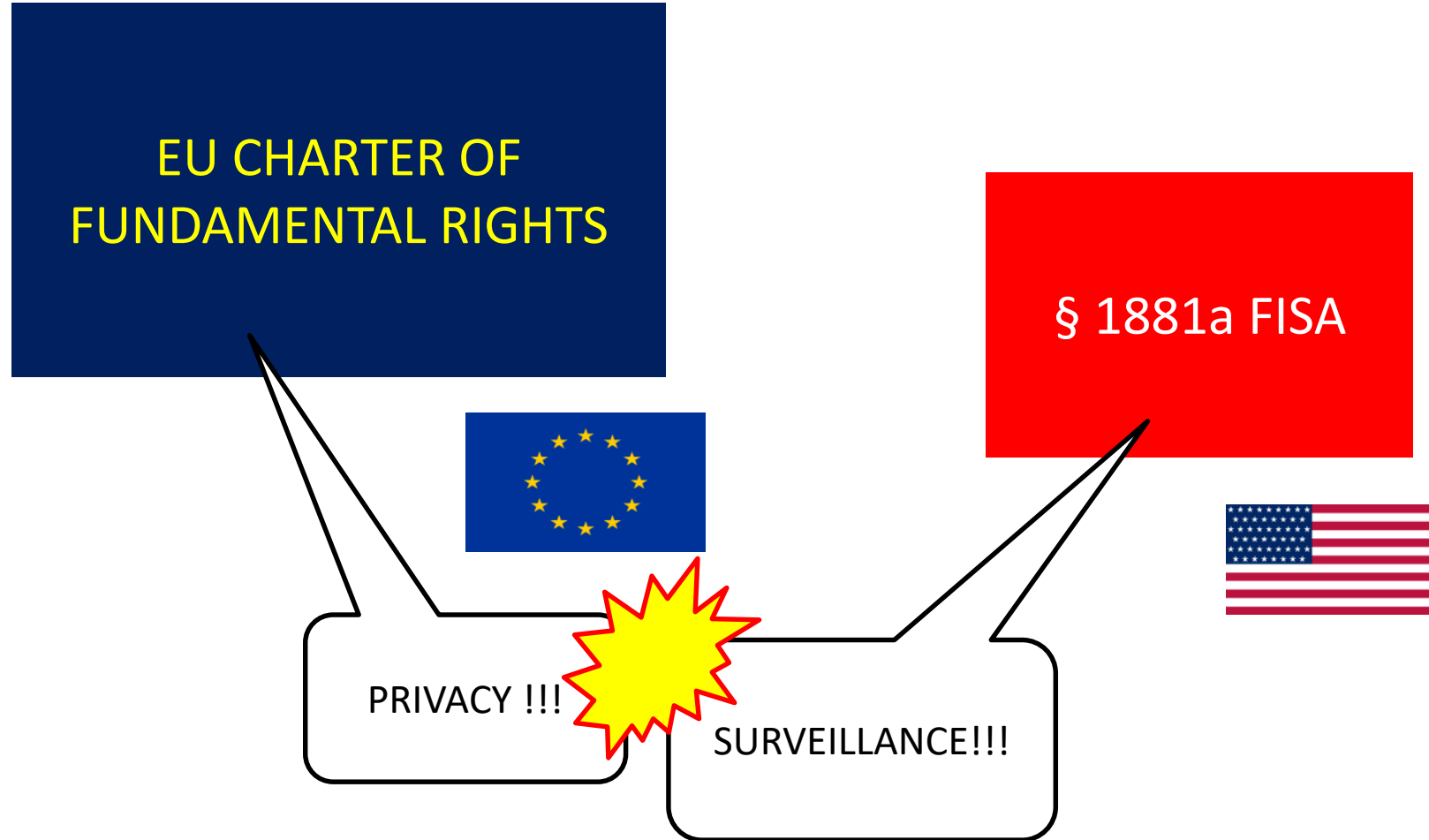


Daten gezogen?



Daten zugänglich?

Konflikt



SAFE HARBOR: DPC



CAROL HOUSE

CENTRA

BIG BRAND PRICE CUTS
we've reduced the price of the brands you love most

CENTRA

© 2011 Google

© 2011 Google

RTE



Foto: James Flynn

„I don't think it will come as much of a surprise that in fact US intelligence services do have access from US companies“

Dear Mr. Schrems,

With reference to your letter of 29th July 2013, please see the following points.

As previously stated, we consider that we have set out our position clearly in previous correspondence and the fact that we choose not to comment on all arguments you have presented should not be taken to mean that we agree with them. We therefore reserve the right to argue them as necessary in the course of judicial review proceedings.

„shall“= „may“

„frivolous“

To be clear we remain of the position that there is a basis within the Data Protection Acts 1988 and 2003 for the Commissioner to make a determination not to investigate a complaint and that in Judicial Review proceedings we reserve the right to seek to rely on Sections 10 (1) (a), 10 (1) (b) (i) or a combination thereof or indeed any other relevant legal basis including previous High Court decisions in defending our position on this point or, should it arise, defending our position that there is no basis for an investigation of this complaint (“Complaint 23”).

Please be advised that we can no longer respond in detail to further correspondence where you seek to summarise or limit our position in this matter and instead we will refer you to our correspondence to date on this matter.

Yours sincerely,



Ciara O'Sullivan
Senior Compliance Officer



Maybe you should ask the audience?

Call a lawyer! He might know.

We don't know...
Can we just pick A, B, C and D?

Why did you not investigate PRISM?

- ◆ A: „shall“ means „may“
- ◆ B: „frivolous or vexatious“
- ◆ C: Combination of A and B
- ◆ D: Another reason

SAFE HARBOR: HIGH COURT



SAFE HARBOR: EUGH



Entscheidung (GRC)

SH ist ungültig:

- *„eine Regelung die es gestattet generell auf den Inhalt elektronischer Kommunikation zuzugreifen“* verletzt Art 7 GRC
- *„Regelung, die keine Möglichkeit vorsieht, mittels eines Rechtsbehelfs Zugang zu Daten zu erlangen oder ihre Berichtigung oder Löschung zu erwirken“* verletzt Art 47 GRC



Kernbereich



1. Legitimate aim for the measure
2. Measure suitable to achieve the aim
3. Measure must be necessary to achieve the aim (Less onerous way?)
4. Measure must be reasonable, considering the competing interests of different groups at hand

PRISM: ZUKUNFT

Datenübermittlung in die USA

Wichtig:

- Nur „Privileg“ für US-Unternehmen weggefallen
- USA nun wie jeder andere Drittstaat

Konsequenz:

- Ausnahmen in Art 26 der RL 95/46/EC
z.B.: Zustimmung, Vertrag, StVK, BCRs...



Zustimmung

EU Recht:

- Frei
- Informiert
- Eindeutig
- Spezifisch

US Recht:

- “Gag Orders”

„Your data may be processed outside of the EEA, including the United States“

„Your data is subject to US law“

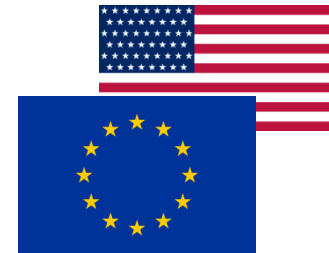
„Your data is subject to all applicable laws“

OK

„I agree that all my personal data is made available to the NSA, FBI (...)“

YES

No



Standardvertragsklauseln / BCRs

- **Klausel 5(b)** des Anhangs zur E 2010/87/EU
 - Information des US Importeurs über US-Recht
 - Option den Vertrag zu kündigen
- **Art 4(1)(a)** der Entscheidung 2001/497/EC
 - Verweis auf Artikel 13 der RL 95/46/EG



SAFE HARBOR: PRIVACY SHIELD

EU-US PRIVACY SHIELD




European
Commission

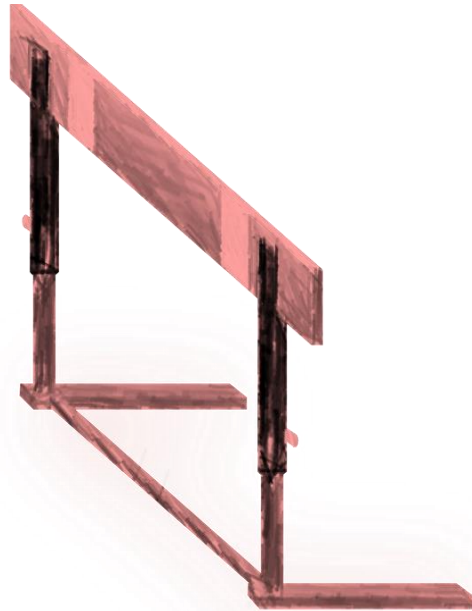
From: "FOIA@trade.gov" <FOIA@trade.gov>
Subject: FOIA Expedited Processing Disposition
Reached for DOC-ITA-**2016-000577**
Date: February 10, 2016 at 4:04:25 PM EST
To: "FOIA@epic.org" <FOIA@epic.org>

Your request for Expedited Processing for the FOIA request DOC-ITA-**2016-000577** has been denied. Additional details for this request are as follows:


- Request Created on: 02/08/2016
- Expedited Disposition Reason: **Because the record that you requested does not exist, we are denying your request for expedited process.** Please note that the Department has provided you a final response within ten calendar days.
- Request Long Description: EPIC seeks the immediate release of the "Privacy Shield," a framework for transatlantic data flows, announced by Secretary Pritzker on February 2, 2016.

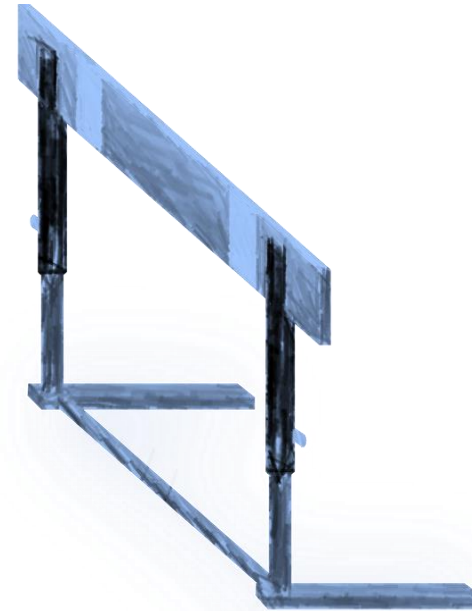
ZWEI HÜRDEN

 \approx 95/46



Art 25 RL 95/46/EC
„der Sache nach gleich“

 = GRC



GRC
Art 7, 8 & 47

ÜBERWACHUNG

ASSESSMENT



“The US authorities ... assured there is no indiscriminate or mass surveillance by national security authorities.”

EU-COM, February 29th, 2016

ANNEX VI, SEITE 4

PPD-28 also provides that signals intelligence collected in bulk can only be used for six specific purposes: detecting and countering certain activities of foreign powers; counterterrorism; counter-proliferation; cybersecurity; detecting and countering threats to U.S. or allied armed forces; and combating transnational criminal threats, including sanctions evasion. The President's National Security Advisor, in consultation with the Director for National Intelligence (DNI), will annually review these permissible uses of signals intelligence collected in bulk to see whether they should be changed. The DNI will make this list publicly available to the maximum extent feasible, consistent with national security. This provides an important and transparent limitation on the use of bulk signals intelligence collection.

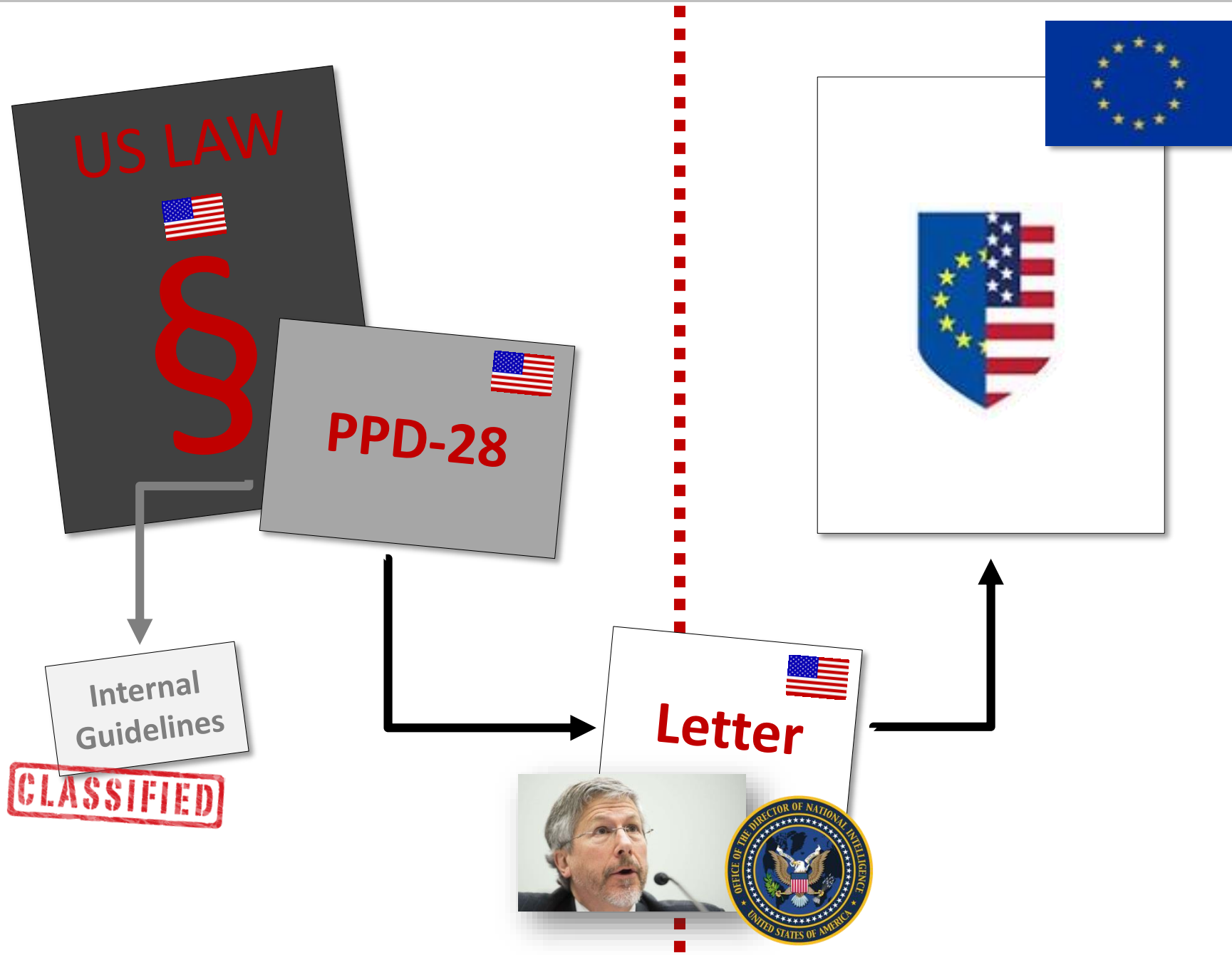
PPD-28, SEITE 3

Sec. 2. Limitations on the Use of Signals Intelligence Collected in Bulk.

Locating new or emerging threats and other vital national security information is difficult, as such information is often hidden within the large and complex system of modern global communications. The United States must consequently collect signals intelligence in bulk⁵ in certain circumstances in order to identify these threats. Routine communications and communications of national security interest increasingly

PPD-28, SEITE 3, FN 5

⁵ The limitations contained in this section do not apply to signals intelligence data that is temporarily acquired to facilitate targeted collection. References to signals intelligence collected in "bulk" mean the authorized collection of large quantities of signals intelligence data which, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.).



ÜBERWACHUNG

RECHTSSCHUTZ



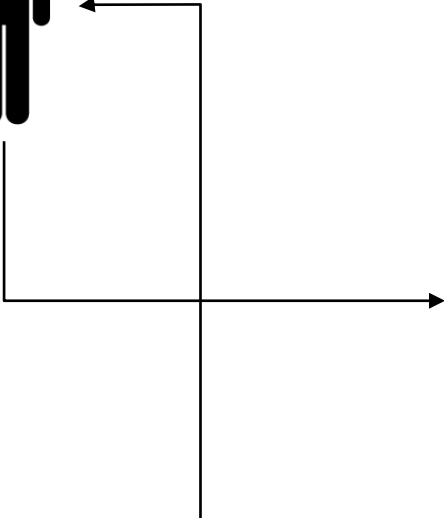
DPA



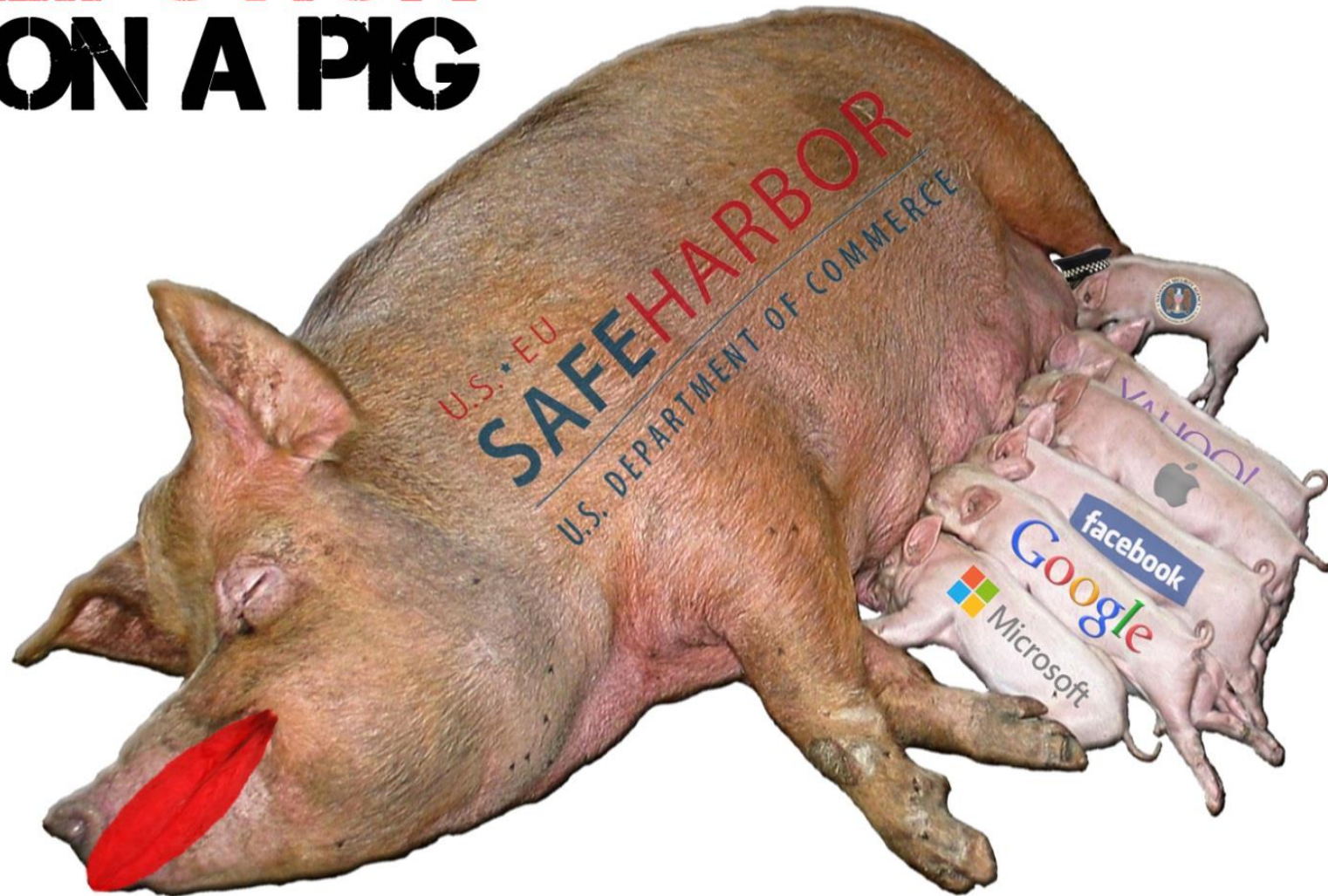
(i) „has been investigated“
(ii) „complied or remedied“

„will neither confirm nor deny that whether the individual has been the target of surveillance“ nor „confirm specific remedy“

ANNEX III, Paragraph 4(e)



LIPSTICK ON A PIG



TEIL 2: RECHTSDURCHSETZUNG NACH DER DSGVO

DSGVO: DUALE DURCHSETZUNG

- **Beschwerde bei der Datenschutzbehörde**
 - Betroffenenort / Unternehmensort
 - Zwei-Parteien-Verfahren
 - Rechtsschutz (Verwaltungsgericht)
 - Strafen (€ 20 Mio / 4%)
- **Zivilrechtliche Durchsetzung**
 - Wohnort, Niederlassung, Hauptverwaltung, Verbraucher (...)
 - Unterlassung, Löschung, Auskunft, Schadenersatz (...)





DSGVO: GEMEINNÜTZIGE VEREINE

- **Artikel 80 (1)**

- Beauftragung durch Betroffenen
- „Massenbeauftragung“

- **Artikel 80 (2)**

- Abstrakte Klage (nur in wenigen Mitgliedsstaaten)



noyb

facebook class action

1 Sign In ▾

JOIN NOW

Join the Facebook class action!

Enter your country of residence.
Note: For legal reasons US and Canadian residents cannot participate.

Choose country of residence... ▾

Are you an adult?
Note: For legal reasons underage persons cannot participate.

No Yes

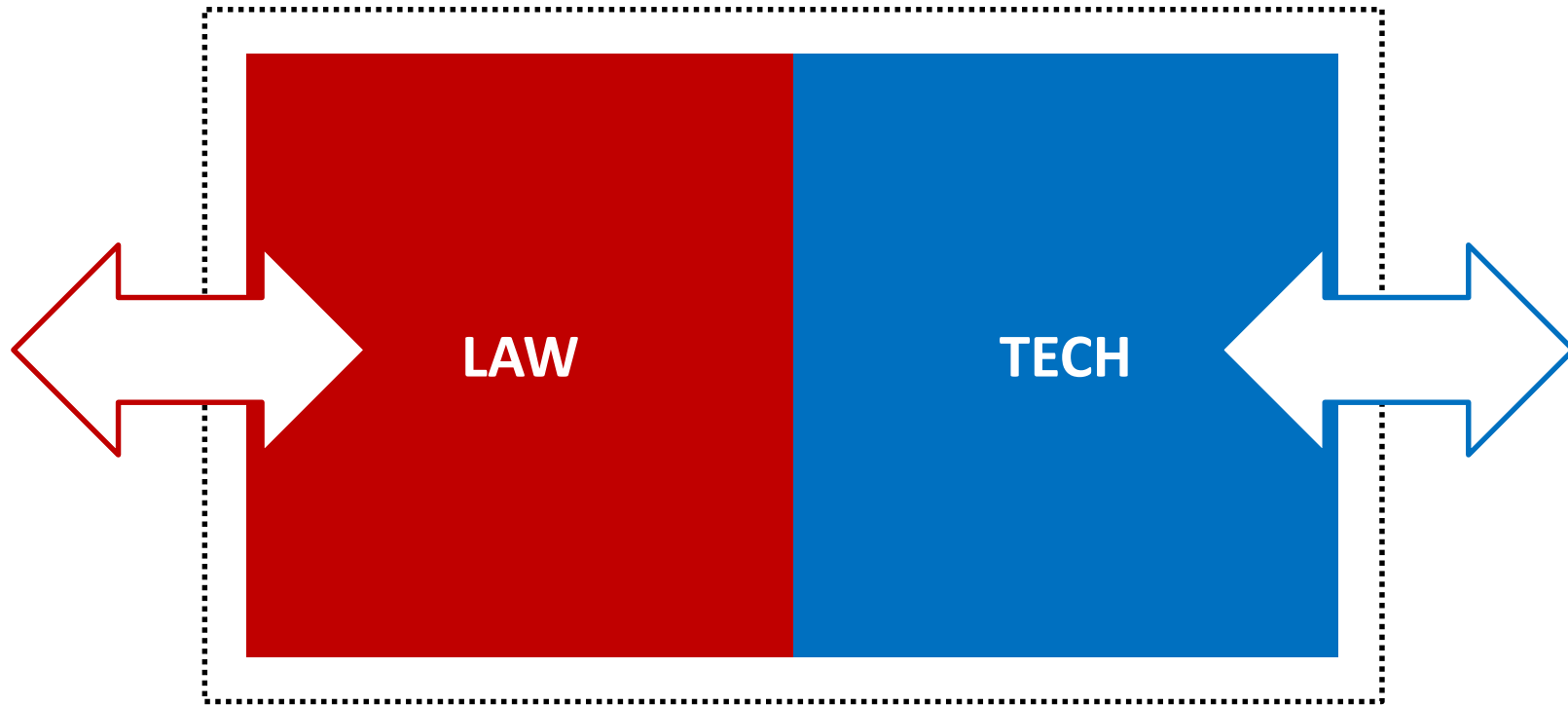
Login with Facebook

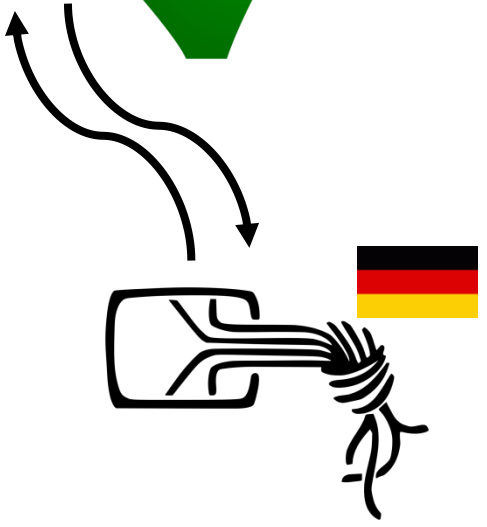
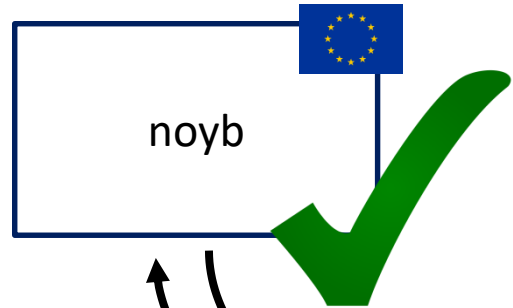
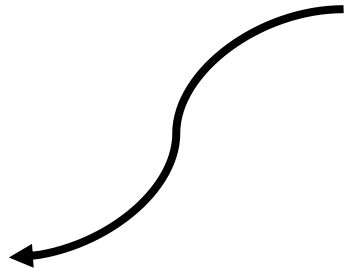
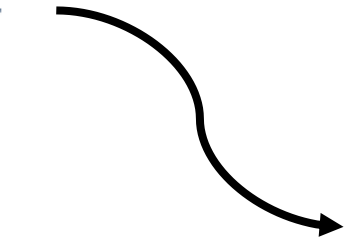
Problems?

We need you to log in with Facebook

ECKPUNKTE

- Kommerzieller Fokus
- Europäischer Fokus
- Netzwerk / Hub Basis
- Subsidiär







ENDE

www.noyb.eu | [@noybeu](https://twitter.com/noybeu) | [@maxschrems](https://twitter.com/maxschrems) | mail@mschrems.com