



# Digital intelligence: a new democratic licence to operate

Amsterdam Data Protection Conference 2015

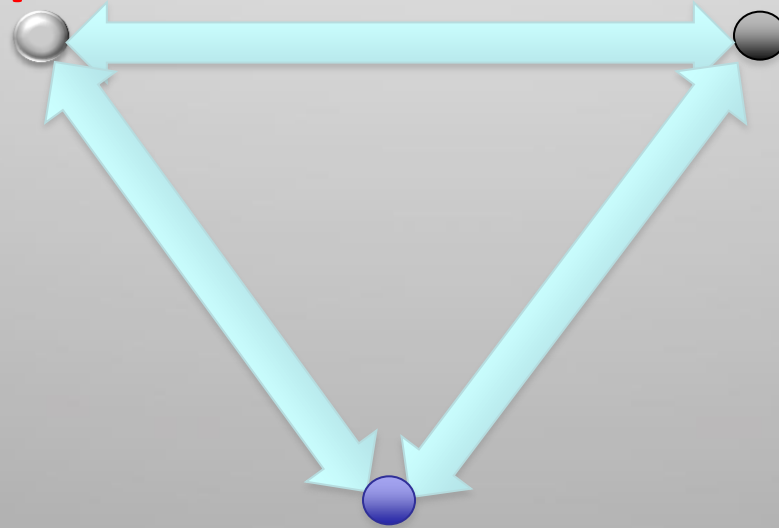
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# Balancing three sets of pressures

**Increased demand  
for intelligence on  
people**

**Supply opportunities  
from digital  
technology**



**Social attitudes and ethical  
issues**

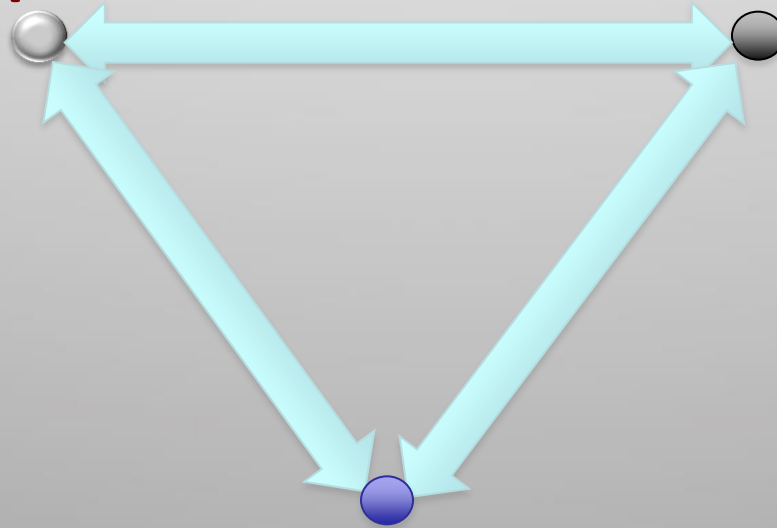
# Increasing demand for Digital Intelligence

- On dictators, terrorists, proliferators, pirates, people smugglers, child abuse networks, hackers, criminal gangs and other non-State actors that mean us harm
- to establish their aliases, identities, associations, activities , location, movements, finance, and intentions (including to eliminate them from investigation).
- To detect, classify and attribute, and disrupt, cyber attacks
- Supporting a wider 'customer' base: tactical military operations, local/ national police forces, border and immigration, revenue and customs, 'homeland security', local authorities for child protection etc.

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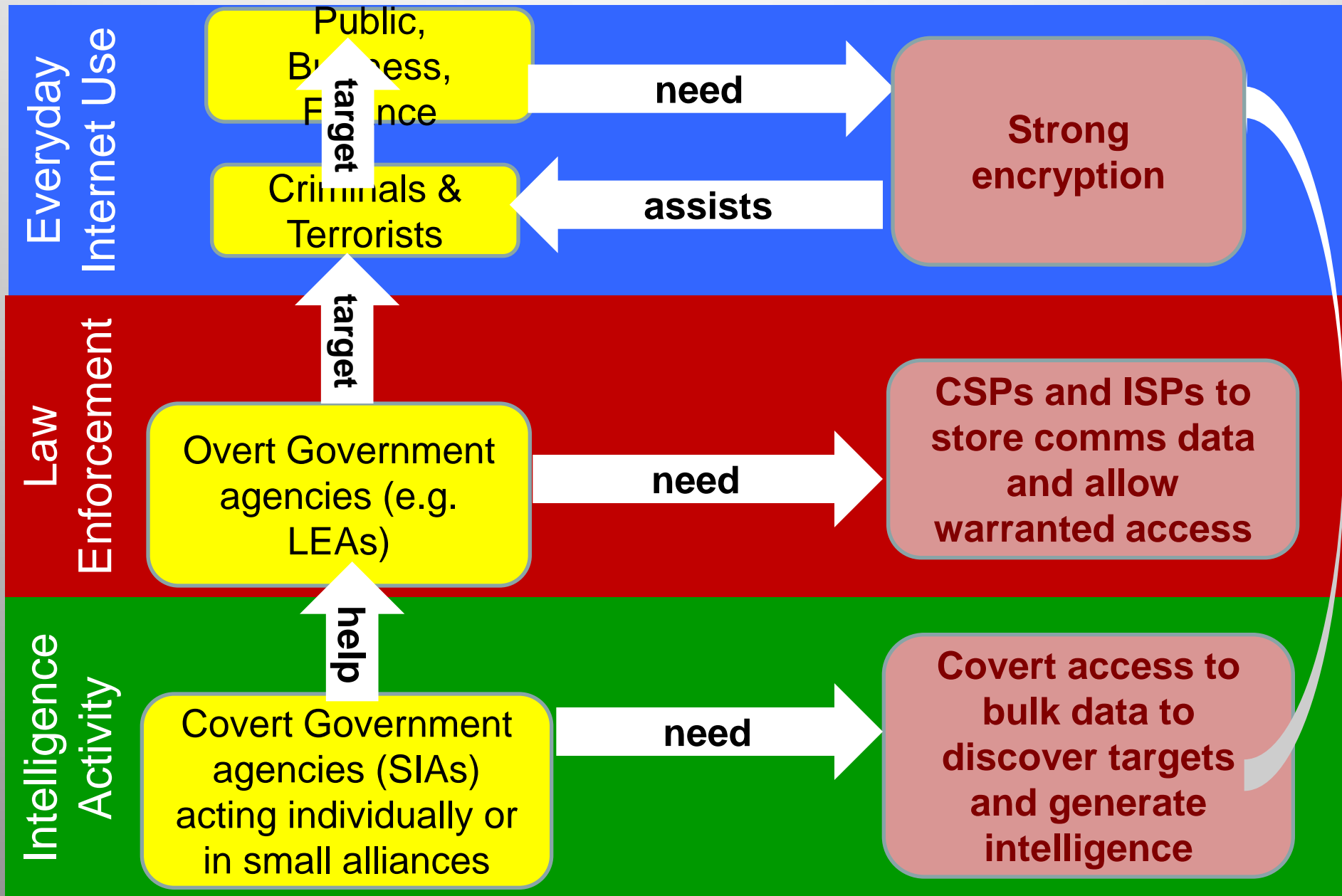


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# Supply: new digital opportunities (but some getting harder)

- Open Source data – key part of modern intelligence
- Data in motion
  - Content, communications data including geo-location, and wider metadata
  - Social media intelligence (SOCMINT)
- Stored Data
  - Government and private sector data-bases: e.g. passports, vehicle licenses, advance passenger information, bank and credit accounts
  - Personal data as collected and monetised by Internet companies
- **Imagery**: CCTV with facial recognition, RPAS imagery, ANPR
- **Computer Network Exploitation (CNE)**

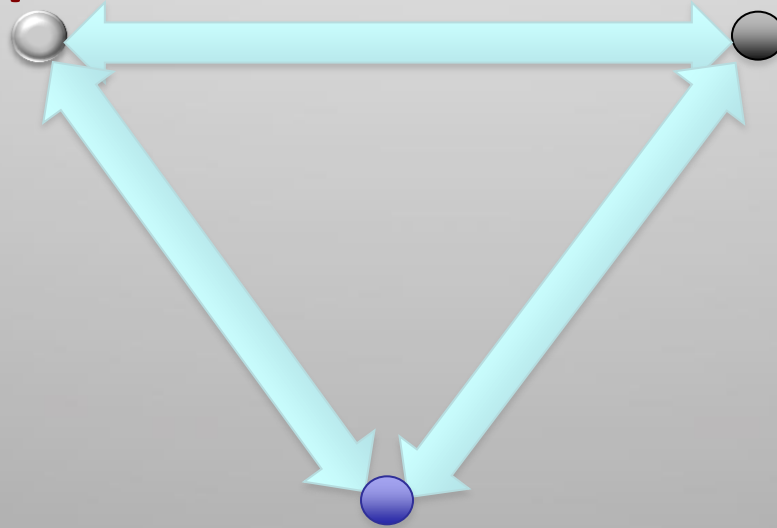
# 3-Tier Model: the Food Chain View



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## Steps to a new licence to operate: UK experience

- Surveillance Commissioner Annual Report, published March 2015: bulk access does not mean 'mass surveillance'.  
Depends on how necessity and proportionality are exercised in practice; GCHQ is not using the US to evade UK law
- UK Court (IPT) examines GCHQ practices in detail. Agrees bulk access engages privacy rights at every stage. But with warrants related to legitimate targets, and discriminators that apply proportionality, practice is compatible with Article 8 rights.
- Court finds against British Government (before 5 Dec 14) under Art. 8 or 10 because safeguards were not published.  
Rule of law requires public to understand how law is applied.



## Steps to a new licence to operate: UK experience

- Commissioners highlight use by police of communications data for 'ordinary' law enforcement including missing persons, suicide risks, sexual offences (>500K requests a year)
- UK Parliamentary Oversight Committee in independent report agrees current powers are essential (now on web)
- But argues for new Internet-age legislation to consolidate current powers and to explain to the public how digital intelligence, including access to digital databases, is authorised and overseen to ensure processes maintain necessity and proportionality criteria. UK Government agrees to draft new legislation for consultation (expected early November 2015)

David Anderson QC  
A Question of Trust, published May 2015

- Independent report commissioned by Government (now on web)
- Re-endorses need for current interception powers and data retention by ISPs, gives powerful examples. Accepts GCHQ practice is consistent with HR Act and ECHR
- Wants all relevant powers consolidated in a new, clearer law
- Recommends
  - Greater judicial involvement in warranting
  - Improved judicial oversight with more expert inspectors
  - Joint Government/Industry advisory board
  - Much higher thresholds for LPP, journalists, MPs and novel or contentious requests etc.

## RUSI Independent Review, published July 2015 A New Democratic Licence to Operate

- Citizen-centric approach: covers impact of intelligence agencies and police
- Current surveillance powers are needed but with a new legislative framework and oversight regime.
- ISP communications data retention essential
- New National Intelligence and Surveillance Office proposed to support Judicial Commissioners
- Recommends: all warrants to have judicial scrutiny, in addition to Secretary of State signing warrant certifying necessity

## The way ahead

- UK Government to publish in draft new Investigative Powers Bill in November, for extensive consultation
- UK proposals will be the ‘gold standard’ for how to provide safety and security for the citizen + respect for privacy and free speech
- Expected largely to follow the independent reports
- Will not include encryption restrictions/mandatory back doors. Unlikely to include ‘third party’ data requirements on ISPs
- Issues remain around data retention powers following ECJ. Cases to come in ECtHR/ECJ, and fallout from ECJ Schrem judgment
- DPC knowledge needed, but national security exemption stands