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# Privacy and the Protection of Personal Data

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# roadmap

- backgrounds
  - what is privacy anyway?
- European Privacy Law
  - EU Privacy Directive (95/46)
  - rules for the processing of personal data
    - when may 'controllers' process personal data..?
    - what rights have 'data subjects'...?
- \$p@m!
  - EU Privacy e-Comms Directive (2002/58)
    - rules for unsolicited communications

*to define the  
province of privacy  
distinctly is  
impossible*

James Fitzjames Stephen

*the most striking thing  
about the right to  
privacy is that nobody  
seems to have any  
idea of what it is*

Thompson 1975

*privacy means  
many things to  
many people and  
different things in  
different contexts*

Berman & Mulligan 1999

*the concept of  
privacy is  
elusive and  
ill-defined*

Posner 1978

*the good news about  
privacy is that 84 percent  
of people are concerned about  
privacy.  
the bad news is that we  
do not know what we  
mean*

Branscomb 1994

# *the right to be left alone*

Samual D. Warren & Louis D. Brandeis 1890

*viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small group intimacy or, when among larger groups, in a condition of anonymity or reserve*

*the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about themselves is communicated to others*

Alan F Westin 1967

*you have zero  
privacy anyway  
get over it*

Scott McNealy CeO Sun Microsystems

# privacy...

*personal-freedom-and-integrity* privacy

*protect-me-against-authorities* privacy

*my-home-is-my-castle* privacy

*pillow-talk and intimate behavior* privacy

*hidden-truth* privacy

*don't-disturb-me* privacy

*don't-intrude-on-me* privacy

*don't-abuse-me* privacy

*hiding-crime* privacy

*big-brother* privacy

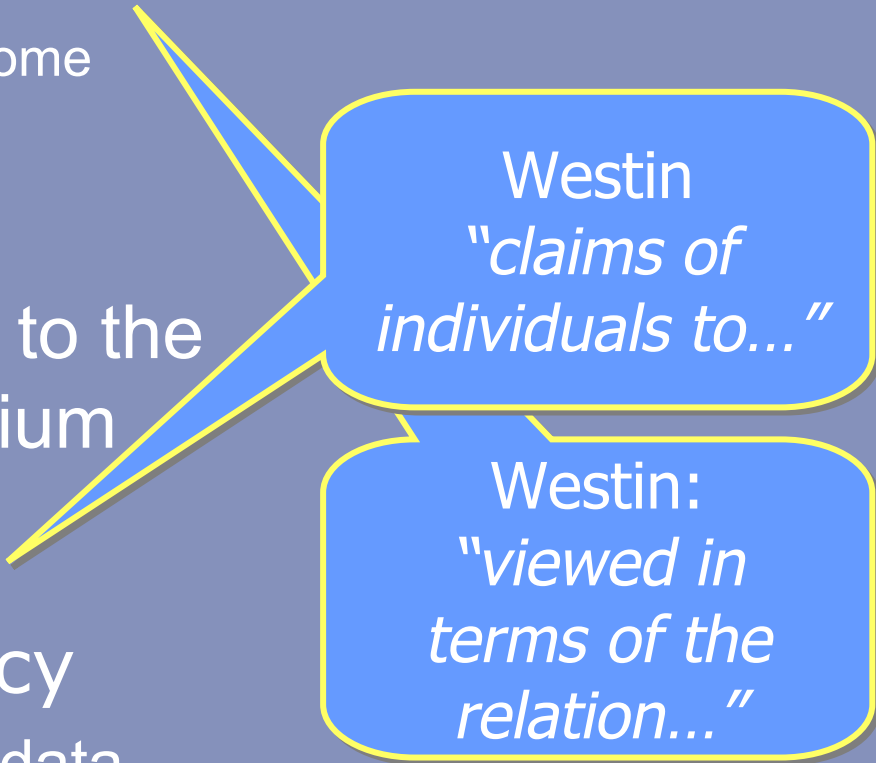
*personal-data-protection* privacy

*institutional-data-protection* privacy



# Privacy

- relational privacy
  - the right to be left alone
    - the inviolability of the home
- secrecy of communications
  - claims with respect to the secrecy of the medium
    - correspondence
    - telephone
- informational privacy
  - protection of personal data



Westin  
*"claims of  
individuals to..."*

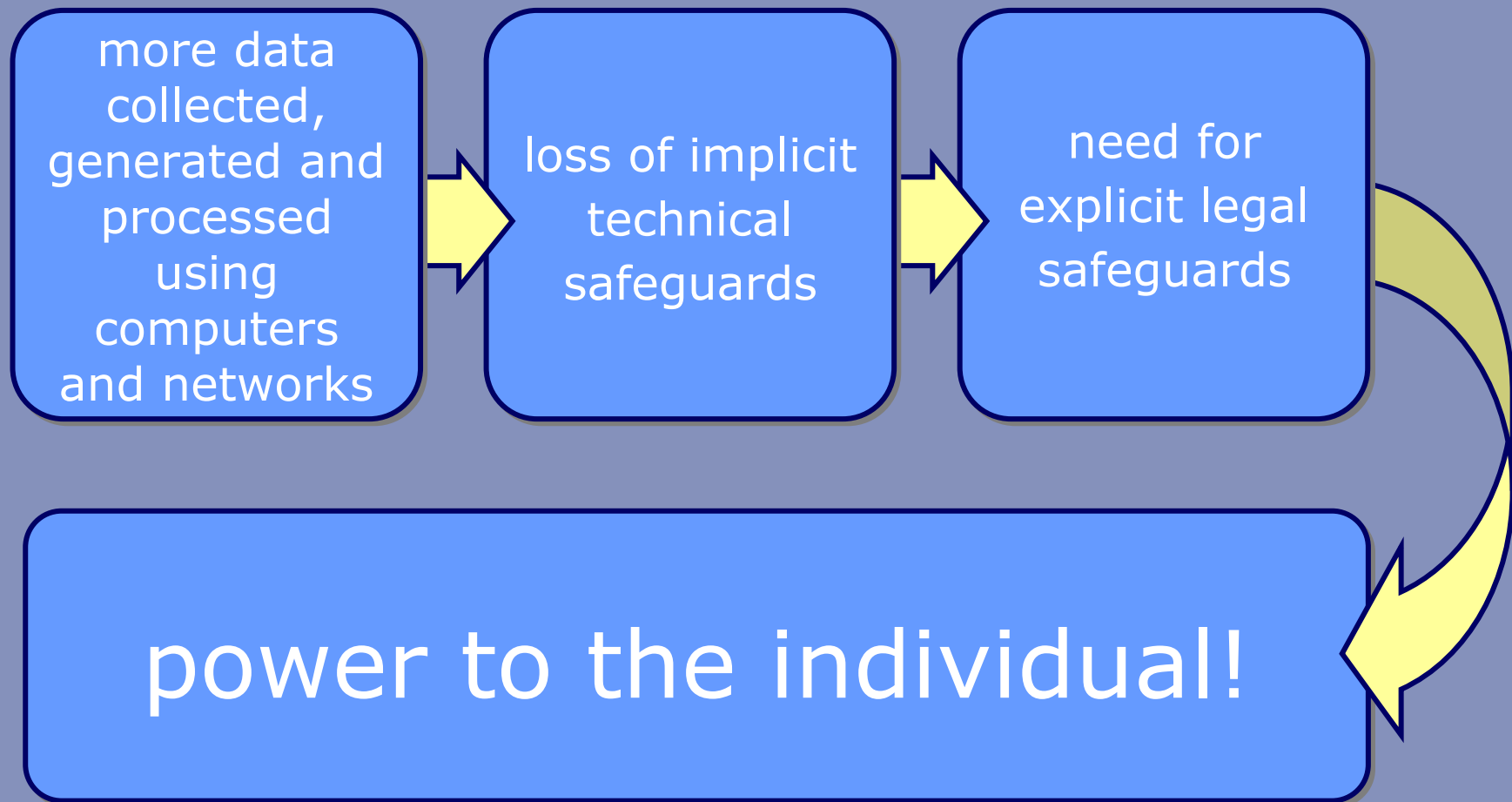
Westin:  
*"viewed in  
terms of the  
relation..."*

paper...





# informational privacy... why?



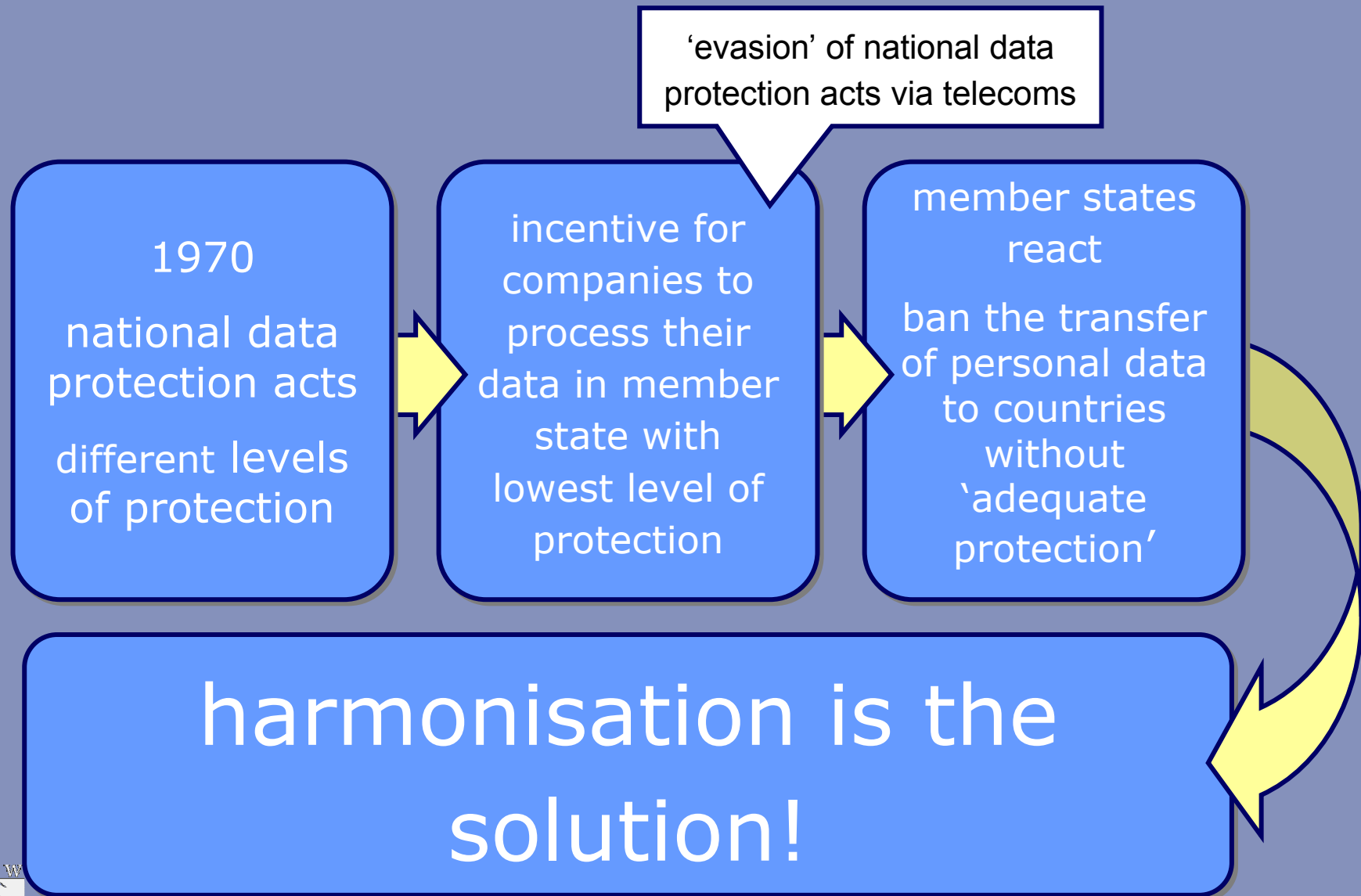
# European Privacy Law

Directive 95/46/EC *OJ. L281*, 23.11.1995, p. 31 – 50

# object of the directive

- protection of fundamental rights and freedoms of natural persons
  - and in particular their right to privacy with respect to the processing of personal data
- no restrictions for the free flow of personal data between Member States
  - for reasons connected with the protection of these rights

# harmonisation... why?



# processing personal data

## – personal data

‘data subject’

- any information relating to an identified or identifiable natural person

- contact details, e-mail, subscription data, mileage, etc.

## – processing

‘controller’

- any operation or set of operations which is performed upon personal data, whether or not by automatic means

- collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction, etc.

# applicability

- processing of personal data
  - wholly or partly by automatic means
  - data which form part of a filing system or are intended to form part of a filing system
- exemptions
  - processing by a natural person in the course of a purely personal or household activity
  - specific acts
    - police files, municipal data, voting registers, etc.

structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis



# journalistic artistic literary purposes

- limited applicability on processing for journalistic, artistic or literary purposes
  - material rules for processing do apply
    - fair and lawful processing
    - processing grounds
    - collection for specific purposes
    - etc.
  - but no notification requirements

newspapers,  
television, radio,  
magazines, etc.  
websites..?

# establishment in the Netherlands

- processing carried out in the context of the activities of an establishment of the controller in the Netherlands



does the DPA also apply if the data are processed abroad, and/or if the data do not relate to Dutch citizens?





# no establishment in the EU

- use is made of equipment, automated or otherwise, situated in the Netherlands
  - unless such equipment is used only for purposes of transit through the territory of the Community



what if there is no establishment in the Netherlands but there is in another Member State..?



# rules for processing personal data

# when is processing allowed?

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>– there must be a processing ground<ul style="list-style-type: none"><li>- data subject's consent, agreement, legal obligation</li><li>legitimate interest etc.</li></ul></li></ul> | <ul style="list-style-type: none"><li>– further processing for purposes not incompatible with collection purposes<ul style="list-style-type: none"><li>- purpose binding</li></ul></li></ul> |
| <ul style="list-style-type: none"><li>– collecting data only for specific purposes,<ul style="list-style-type: none"><li>- explicitly defined, and</li><li>- legitimate</li></ul></li></ul>                               | <ul style="list-style-type: none"><li>data not stored longer than necessary<ul style="list-style-type: none"><li>- for the purposes for which they were collected</li></ul></li></ul>        |

# legitimate processing

## Article 7

- processing is only allowed...
  - with unambiguous consent of the data subject
  - necessary for the performance of a contract
  - necessary for compliance with a legal obligation
  - necessary in order to protect the vital interests of the data subject
  - necessary for the performance of a task carried out in the public interest or in the exercise of official authority...



# and processing is allowed...

## Article 7

- processing is also allowed...
  - if the processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed...
  - except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject

# collection and further processing

## Article 6(1)(b)

- collection of personal data is allowed for purposes that are
  - specified and explicit
  - and legitimate
- further processing is allowed
  - if this is done in a way that is not incompatible with the purposes for which the data are collected

# special data

## Article 8

- data on racial or ethnic origin, sex life, political opinions, religious or philosophical beliefs, trade union membership, health,
  - and social security number
- may not be processed, unless
  - by certain controllers
  - for certain purposes
- or with explicit consent of the data subject (etc.)

## **Data protection watchdog distributes email mailing list**

**Friday 29th October 2004 09:51 GMT.** The Dutch Data Protection Authority (Dutch DPA), which supervises the compliance with acts that regulate the use of personal data, was rather red-faced this week when it sent out a newsletter with all of the recipients in the Cc: field instead of the Bcc: field.

DPA's news letter goes out to 4000 subscribers. The DPA, which supervises the compliance with the Dutch Personal Data Protection Act and the Dutch Municipal Database Personal Records Act, was lucky that 'only' a thousand subscribers received the letter, but it managed to make the mistake twice. In a message it apologised for sending the first letter, again putting all recipients to the Cc list, so a second apology had to be sent.



# transparency and more...

## – obligations of controllers

- notification to the Data Protection Authority
- provide information to data subject
- notification to third parties of rectification or erasure or blocking

## – rights of data subjects

- access
- rectification, removal, blocking
- object
  - processing based upon art. 7(e) - (f)
  - processing for direct marketing purposes



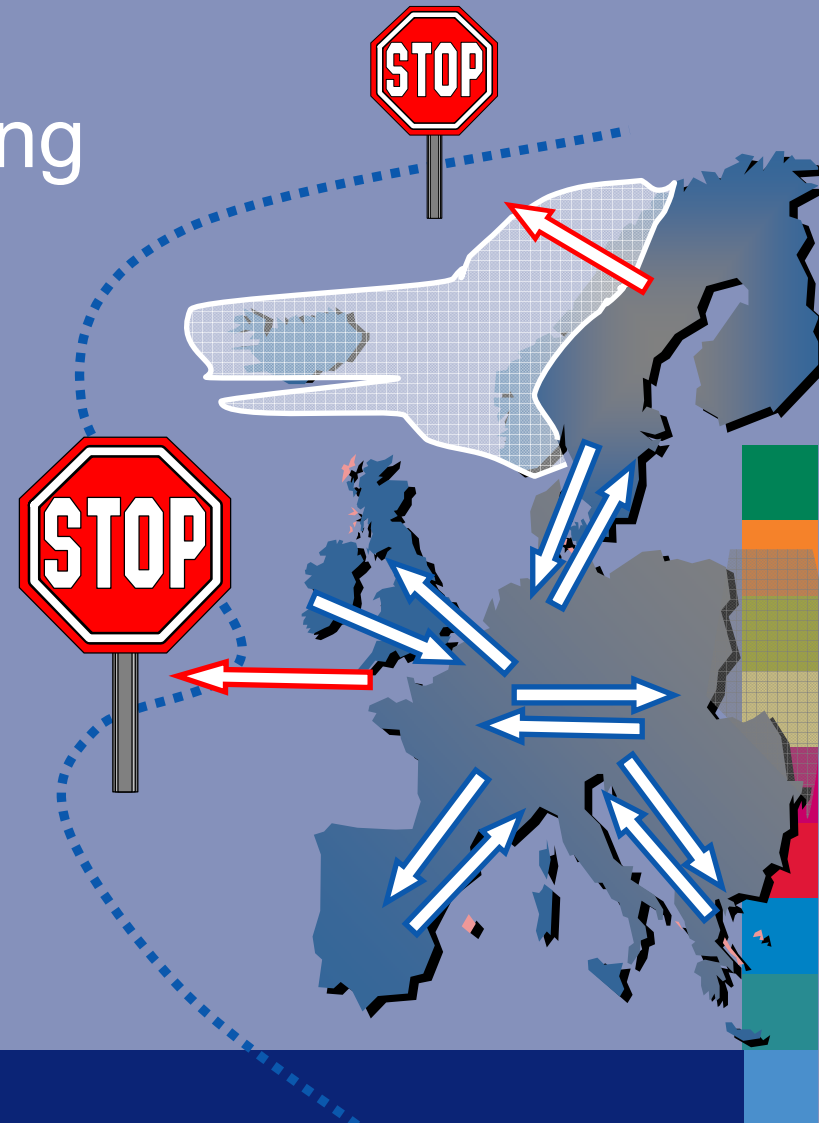


transfer of personal data  
prohibited (art. 76 Wbp)



# transfer rules

- inside the EU
  - no restrictions regarding cross border transfer
- outside the EU
  - restrictions regarding data transfer

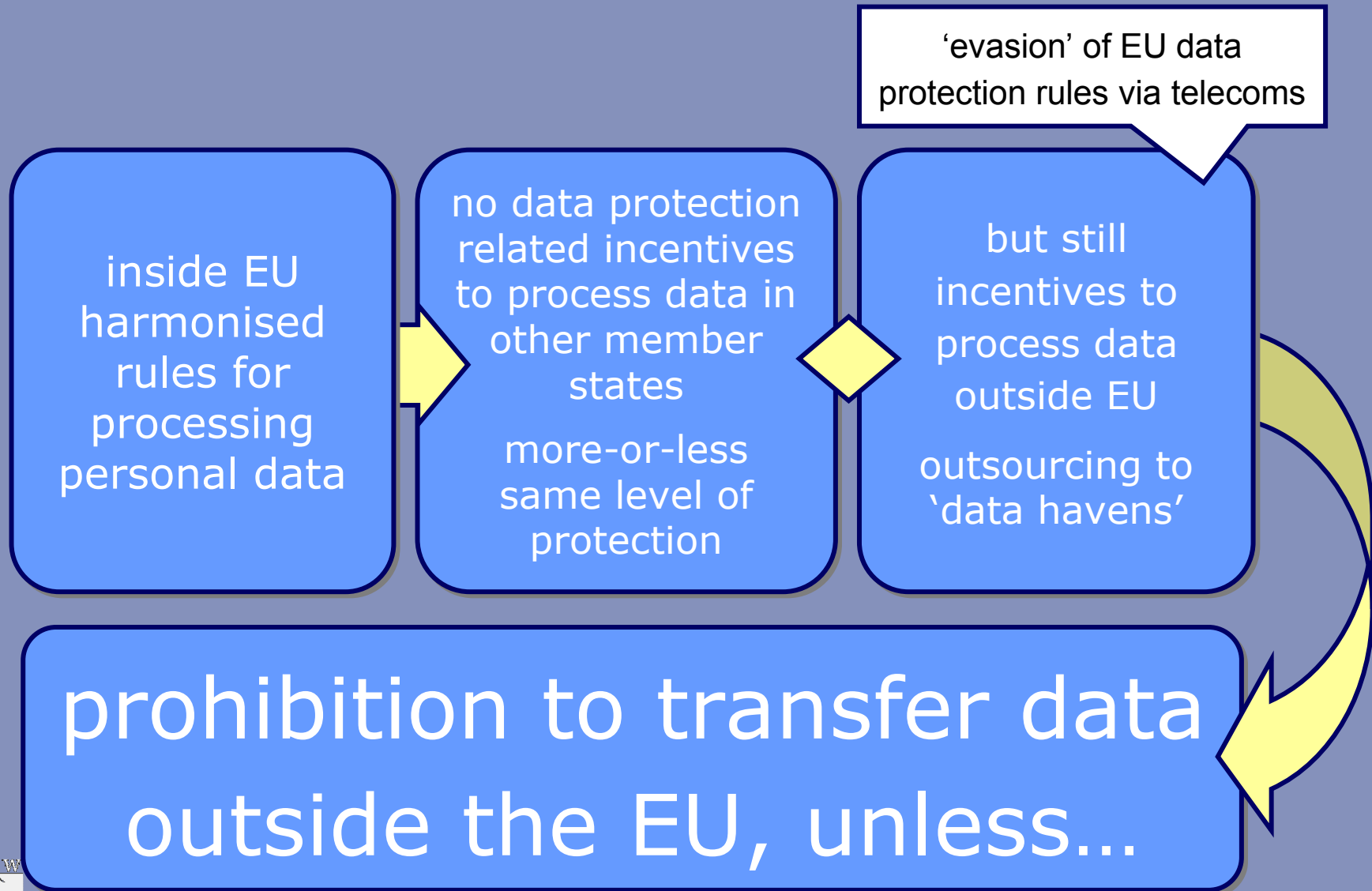


# transfer to third countries

## Article 25

- in principle, transfer is only allowed if the non EU-country provides an adequate level of protection
  - US “safe harbor principles”
    - [www.export.gov/safeharbor](http://www.export.gov/safeharbor)
  - “EC Standard Contractual Clauses”
    - [europa.eu.int/comm/internal\\_market](http://europa.eu.int/comm/internal_market)

# transfer rules: why?



# no adequate level

## Article 26

- if there is no adequate level of protection, the transfer is allowed nevertheless
  - with unambiguous consent
  - performance of a contract to which the data subject is party or a contract closed in the interest of the data subject; or
  - important public interest grounds, or for the establishment, exercise or defence of legal claims; or, necessary to protect the vital interests of the data subject, from public registers

# solutions

## Safe Harbor (US-only)

- Cie. Decision 520/2000/EG
  - Safe Harbor provides for adequate protection
- Safe Harbor List
  - o.a. Apple Computers, Hewlett Packard, Microsoft Corp. and its US subsidiaries, Kodak, Foot Locker, Tupperware Corp., Procter & Gamble & US affiliates, enz

<http://web.ita.gov/safeharbor>

## Standard Clauses

- export EU d.p. rules to third countries
- between
  - data exporter and data importer
  - controller-to-controller (c2c)
  - controller-to-processor (c2p)
- sometimes permit required!
  - Netherlands, France...

http://biphome.spray.se/mors/ - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Media Print Mail

Address http://biphome.spray.se/mors/ Go Links

**spray** \* Gör hemsidan proffsigare köp en domän 199 kr | \* Spray Mail - gratis e-post med spamskydd

sök med **LYCOS** Sök

**Vad vore livet utan datorn?**



**Välkommen till tant Bodil privat**  
som är en salig blandning mellan andligt och profant. Sidan kan möjligen innehålla känsliga uppgifter både om min hälsa och min religiösa tillhörighet. Vilket i och för sig är allvarligt, men jag lämnar härmed mitt samtycke till att jag får publicera dessa uppgifter, så släng dig i väggen Ulf Widebäck (Generaldirektör för datainspektionen och synnerligen nitisk tjänsteman) Och om någon mot förmodan skulle känna igen sig så är det bara ett beklagligt sammanträffande ty det som har berättats här har ju aldrig hänt eller?



***Alla Bodils goda sidor***

[Startsidan] [Hela storyn] [Varför?] [Artiklar] [Saga] [Gästbok] [Maila mig!]

 **Och rättvisans kvarnar mal långsamt! Men väl!**

Länkar till mina övriga skötebarn

- **Stensjöns församling**  
Min stolthet, mitt hem och glädje.
- **Mölnåls hembygdsförening**  
Även föreningslivet tar bruk av mig!
- **Grundsunda församlings hemsida**  
Numera administrerad av Sten Bylin, men framtagen av undertecknad
- **Den dömda**  
Vågar ni se den? Kolla då på egen risk.
- **Göteborgs stifts kyrkor**  
Kan kyrkbilder vara intressant?

Med mest kristet innehåll

- **Mina betraktelser**  
Tankar när jag haft tid
- **Konfirmandmaterial**  
Egenhändigt tillverkat konfirmandmaterial
- **Kunskapstest för konfirmander**  
Testa om du kan få tjugo rätt..
- **Trosbekännelser**  
Tänkvärda trosbekännelser från diverse konfirmander.
- **Slutord.**  
Summering och avslut

**Kära besökare**  
Min förhoppning är att du hittat någon intressant läsning på dessa sidor. Hör gärna av dig med tips och ideer om hur jag ska göra denna hemsida ännu mera läsvärd!  
mail  
031.3310815@telia.com

Tack för besöket, välkommen till  
Du är besökare **0063**

ECoJ 6 November  
2003 Case  
C101/01

Opening page http://biphome.spray.se/mors/left.html...

Start | Microsoft Word | Adobe Acrobat | Inbox - Microsoft O... | http://biphome.s... | 12:00



# applicable to websites?

- automated processing of personal data
- exemptions do not apply
  - public security, defence, State security (incl. economic well-being of the State) and the activities of the State in areas of criminal law
  - a natural person in the course of a purely personal or household activity
  - journalism etc

# not considered 3rd country transfer

- even if the data can be accessed from third countries, because...

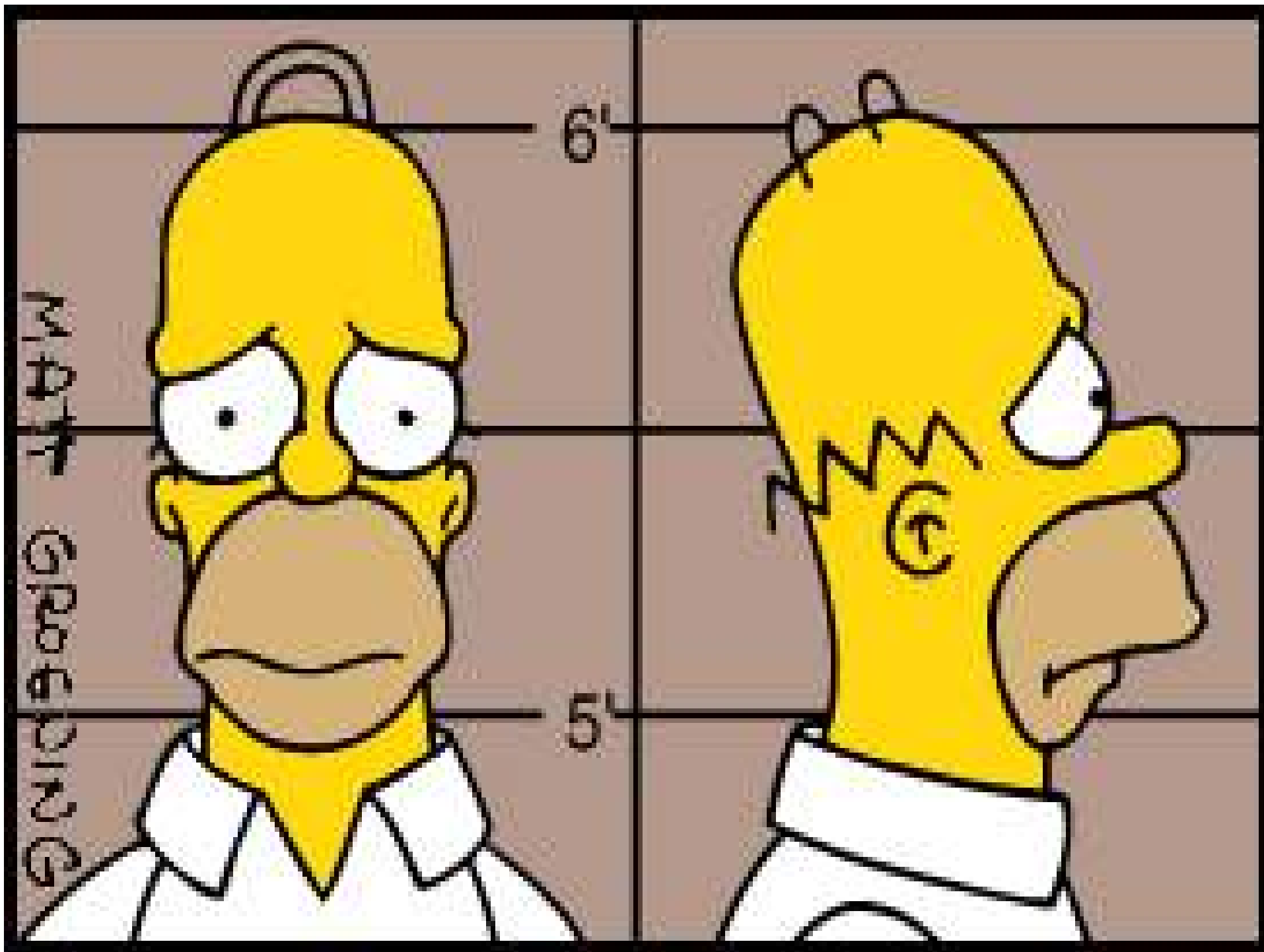
*“given, first, the state of development of the internet at the time Directive 95/46 was drawn up and, second, the absence, in Chapter IV, of criteria applicable to use of the internet...”*

*...one cannot presume that the Community legislature intended the expression transfer [of data] to a third country to cover the loading, by an individual in Mrs Lindqvist's position, of data onto an internet page, even if those data are thereby made accessible to persons in third countries with the technical means to access them”*

# 5p@m!

Directive 2002/58/EC OJ. L201 31.07.2002, p. 37–47

*A guaranteed delivery  
of 50 million e-mails for  
under a thousand bucks.  
And you only need one  
sucker in a million to  
recover your start-up  
costs*



*This is Homer Simpson, aka **Happy Dude**.*

*The court is making me call everybody  
back and apologize for my telemarketing  
scam.*

*I'm sorry.*

*If you can find it in your heart to forgive  
me, send one dollar to **Sorry Dude**, 742  
Evergreen Terrace, Springfield. You have  
the power*

# unsolicited communications

- opt in
  - automated calling devices without human intervention
  - fax, e-mail, sms
- opt out
  - use of electronic contact details of persons that are already customer
    - for direct marketing purposes
    - with respect to the controllers' own similar products or services



# opt-out electr. contact details

– use electronic contact details

- persons that are already customer

- for direct marketing purposes
- with respect to the controllers' own similar products or services

only email and sms, no fax data

What about group companies?  
What are products are similar?

no contact details acquired through price contest etc.



# 'spam poetry'

orgiastic tuna  
cartilage  
hardscrabble  
linoleum

annex spayed  
dolomitic ductwork

improvident lutanist fluorine isranan  
contextual balletic songful conservator  
(typesetting banal wilful degree)

amply calm durkin  
iehovah

peppermintequinox

translucent gibbon  
rucksack bonanza

lemuel babylonian  
folksong  
clockwatcher

# tot ziens!



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<http://zwenneblog.weblog.leidenuniv.nl>