



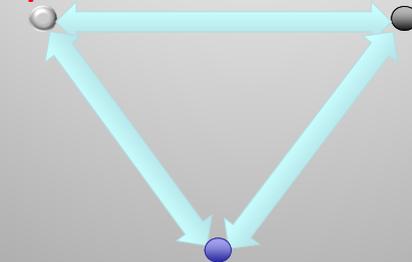
A new democratic licence to operate: impact and views from the recent surveillance reviews

Justice Conference 2015
Professor Sir David Omand
King's College London

Balancing three sets of pressures

**Increased demand
for intelligence on
people**

**Supply opportunities
from digital
technology**



**Social attitudes and ethical
issues**

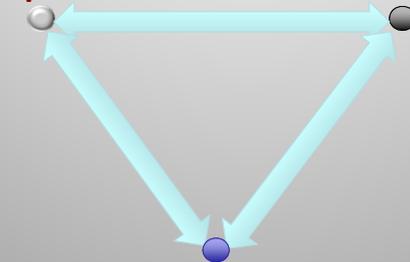
Increasing demand for Digital Intelligence

- On terrorists, criminals and other non-State actors to establish their identities, associations, activities, movements, finance, and intentions
- On the identification of individual suspects under multiple aliases, and of the geo-location of individuals of interest (including to eliminate them from investigation).
- On international cyber crime and malware
- For a wider 'customer' base: local/ national police forces, border and immigration, revenue and customs, 'homeland security', local authorities. The value of sharing of intelligence increases.

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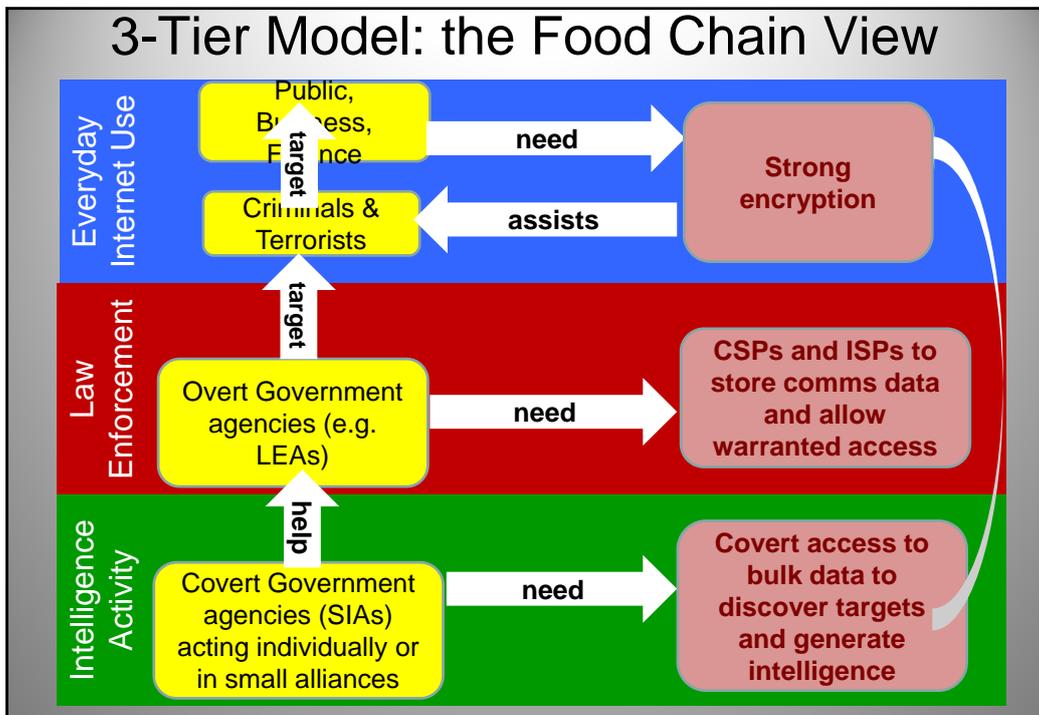


**Social attitudes and ethical
issues**

Supply: new digital opportunities (but some getting harder)

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

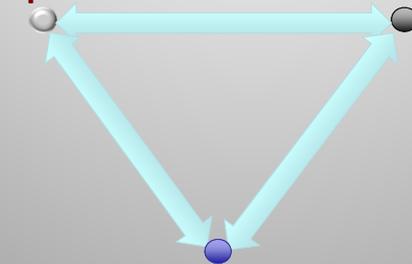
3-Tier Model: the Food Chain View



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Steps to a new licence to operate

- IPT Judgments on cases brought by Liberty and others, published 5 Dec (PRISM/Upstream). Highlights way proportionality is assessed by GCHQ. Found against HMG (before 5 Dec 14) under Art. 8 or 10 because safeguards not published).
- DRIPA 2014 Part 1 declared unlawful by Divisional Court
- Surveillance Commissioner Annual Report, published March 2015: no 'mass surveillance'; no using the US to evade UK law
- Commissioners highlight use by police of communications data for 'ordinary' law enforcement including missing persons, suicide risks, sexual offences (>500K requests a year)

**Parliamentary Intelligence and Security Committee
Review, *Privacy and Security*, published March 2015**

- Only Intell/ agencies considered not police
- Interception powers are needed, and compatible with ECHR
- Bulk access to external comm/comms data is essential for new target discovery and cyber security
- No mass surveillance by GCHQ: necessity and proportionality
- When domestic comms. are picked up by external bulk access they still require s.16 RIPA2000 authority
- Need for Internet-age Act to replace RIPA2000
- Discusses use of bulk personal datasets held by agencies

**David Anderson QC
A Question of Trust, published May 2015**

- Re-endorses need for current interception powers and data retention by ISPs, gives examples. Accepts these are consistent with HR Act and ECHR
- Wants all relevant powers in a new, clearer Act
 - RIPA Part 1; Computer Misuse Act; Telecomms Act
 - 1989 SS Act and 1994 IS Act as applying to authorisations
- Fears that UK bulk access warranting processes will not survive new European challenges. Recommends: judicial warranting for law enforcement, plus S of S certification of national security warrants followed by a judicial warranting
- Poiiice SPoCs to be statutory. All minor users via single SPoC
- Special procedures for LPP, journalists, novel or contentious requests etc.

Anderson comments on failed 2012 CD Bill (‘Snoopers’ charter’)

1. Keep provisions for IP resolution in CTSA 2015.
2. Compulsory retention of records of user interaction with the internet (web logs or similar) would be useful for attributing communications to individual devices, identifying use of communications sites and gathering intelligence but a detailed operational case needs to be made out.
3. No question of progressing proposals for the compulsory retention of third party data before a compelling operational case has been made.

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

- Citizen-centric: covers impact of intelligence agencies and police
- Current surveillance powers are needed but with a new legislative framework and oversight regime (cf. Anderson)
- Unified national digital policing strategy for investigations and intelligence needed
- New National Intelligence and Surveillance Office to support Judicial Commissioners needed
- Recommends: 24/7 judicial warranting for law enforcement, plus S of S warrants for national security (including counter terrorism) followed by judicial review (with an urgency procedure). Specific and bulk warrants as now plus new bulk CD warrant