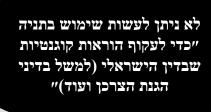




רע"א 5860/16 פייסבוק נ' בן חמו

- "אין מנוס מלהורות על ביטולה של תניית השיפוט הזר".
- לפייסבוק "אינטרס עסקי לגיטימי" בהעדפת הדין בקליפורניה".
 "שיטת המשפט בקליפורניה היא בעלת מאפיינים דומים לשיטת
 המשפט בישראל ונחשבת לאחת המתקדמות בעולם בתחום
 התובענות הייצוגיות. התקדימים והחוקים במדינה זו הם בשפה
 האנגלית המובנת לרבים מתושבי ישראל והם נגישים באמצעות
 האינטרנט".











סטטוס תובענות ייצוגיות היום



בן חמו ני פייסבוק: טוענים להפרת הדין הזר

(בקשה לסעדים הצהרתיים בלבד).

וינטר וספקטור ני גוגל: טוענים לקיפוח באימוץ הדין הזר.

ברוך ני גוגל, אשל ני גוגל: טוענים לקיפוח

באימוץ הדין הזר.







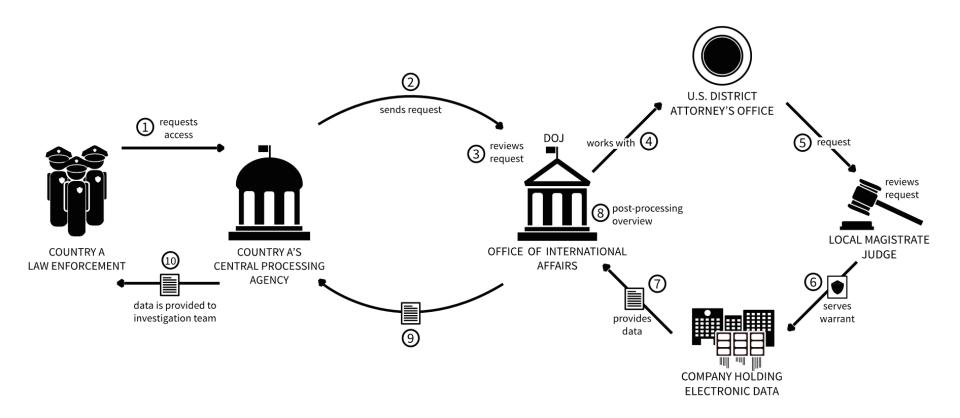
Compelled Access regardless of location of data
Possibility of Executive Agreement
Number of EAs since March 2018? = 0
Right to Challenge (if non-American, stored abroad)
Subject to "Comity" Analysis

European Counter-Response: E-Evidence Directive India's Counter-Response: Data Localization





EXAMPLE OF THE MLAT PROCESS



COUNTRY A

UNITED STATES

Diagram 1 Example of the U.S. Mutual Legal Assistance Treaty Process for Electronic Evidence

THE DOJ DRAFT PROPOSAL

1 ESTABLISHMENT OF AN EXECUTIVE AGREEMENT



CLOUD Act

DIRECT REQUEST TO COMPANIES

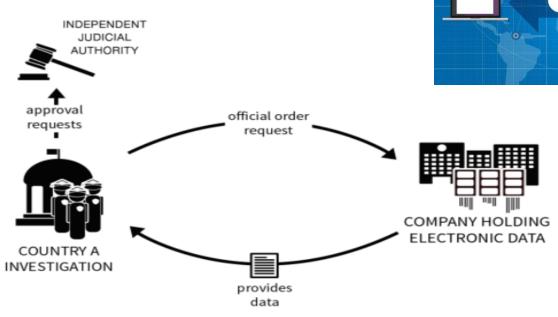


Diagram 2 Diagram of DOJ Cross-Border Data Access Proposal





IS THE RIGHT TO BE FORGOTTEN LAW

Ever coming to the United States?









COUR DE JUSTICE DE L'UNION EUROPÉENNE

Parties/Observers to the Budapest Convention and Observer Organisations to the T-CY

61 Parties to the Budapest Convention

Costa Rica





Cybercrime Division

F-67075 Strasbourg Cedex

Agora Building

Article 18 - Production order

Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

- a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and
- b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.

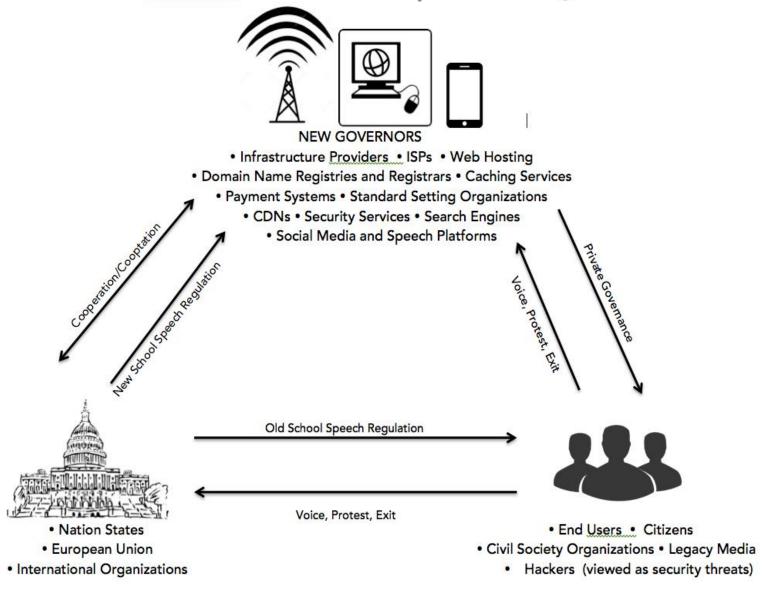
T-CY adopts Guidance Note on Article 18



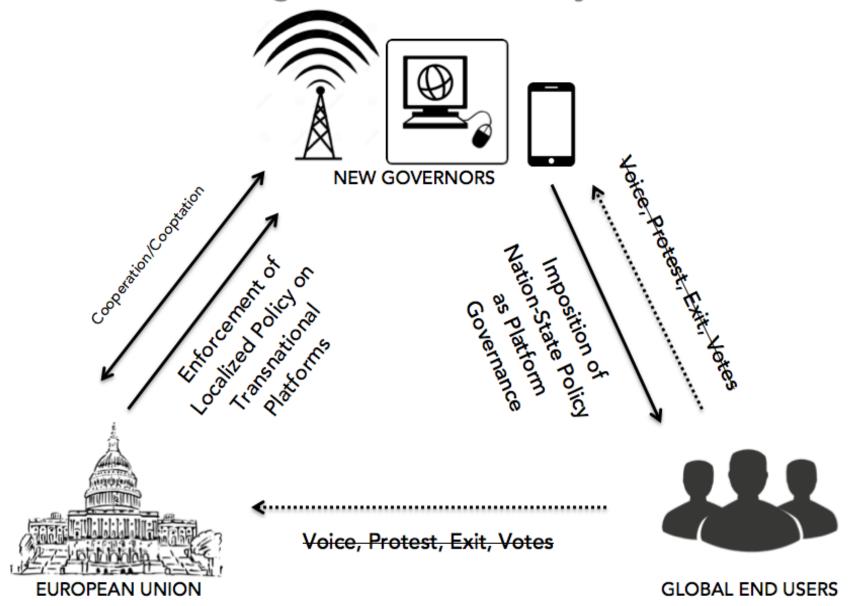
The Cybercrime Convention Committee, following detailed negotiations, has adopted a Guidance Note on the production of subscriber information following a lawful request by a criminal justice authority. This includes situations where a service provider is offering a service in the territory of a State without necessarily being located in the State or where the subscriber information sought may be stored in another jurisdiction or on servers "somewhere in the cloud".



The Balkin Model of Speech Regulation



The Digital Democracy Deficit





Against Data Exceptionalism

Andrew Keane Woods





THE YALE LAW JOURNAL

FORUM

VOLUME 125 2015-2016

NUMBER 2 NOVEMBER 2015 326-559

ARTICLE

The Un-Territoriality of Data

✓ Jennifer Daskal

f CIVIL PROCEDURE • EVIDENCE • PRIVACY

SUBMISSIONS

MASTHEAD

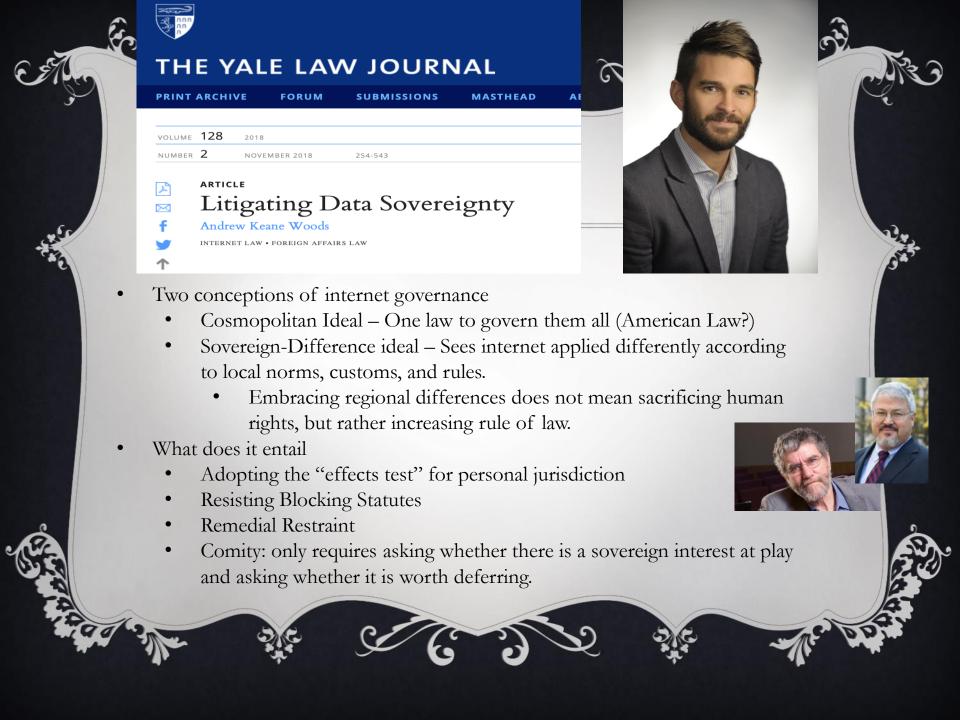
ABOU

II. DATA IS DIFFERENT

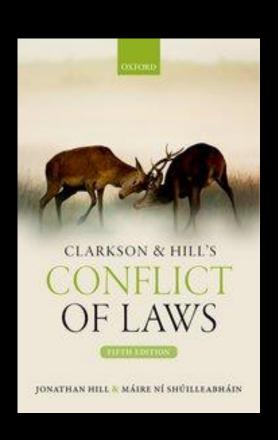
- A. Data's Mobility
- B. Data's Divisibility and Data Partitioning

PRINT ARCHIVE

- C. Location Independence
 - 1. Disconnect Between Location of Access and Location of Data
 - 2. Disconnect Between Data and the Data User
- D. Data's Intermingling
- E. Third-Party Issues



Comprehensive Conflict of Laws Approach



Choice of Jurisdiction

Choice of Law

Choice of Remedy

Choice of Enforcement

