



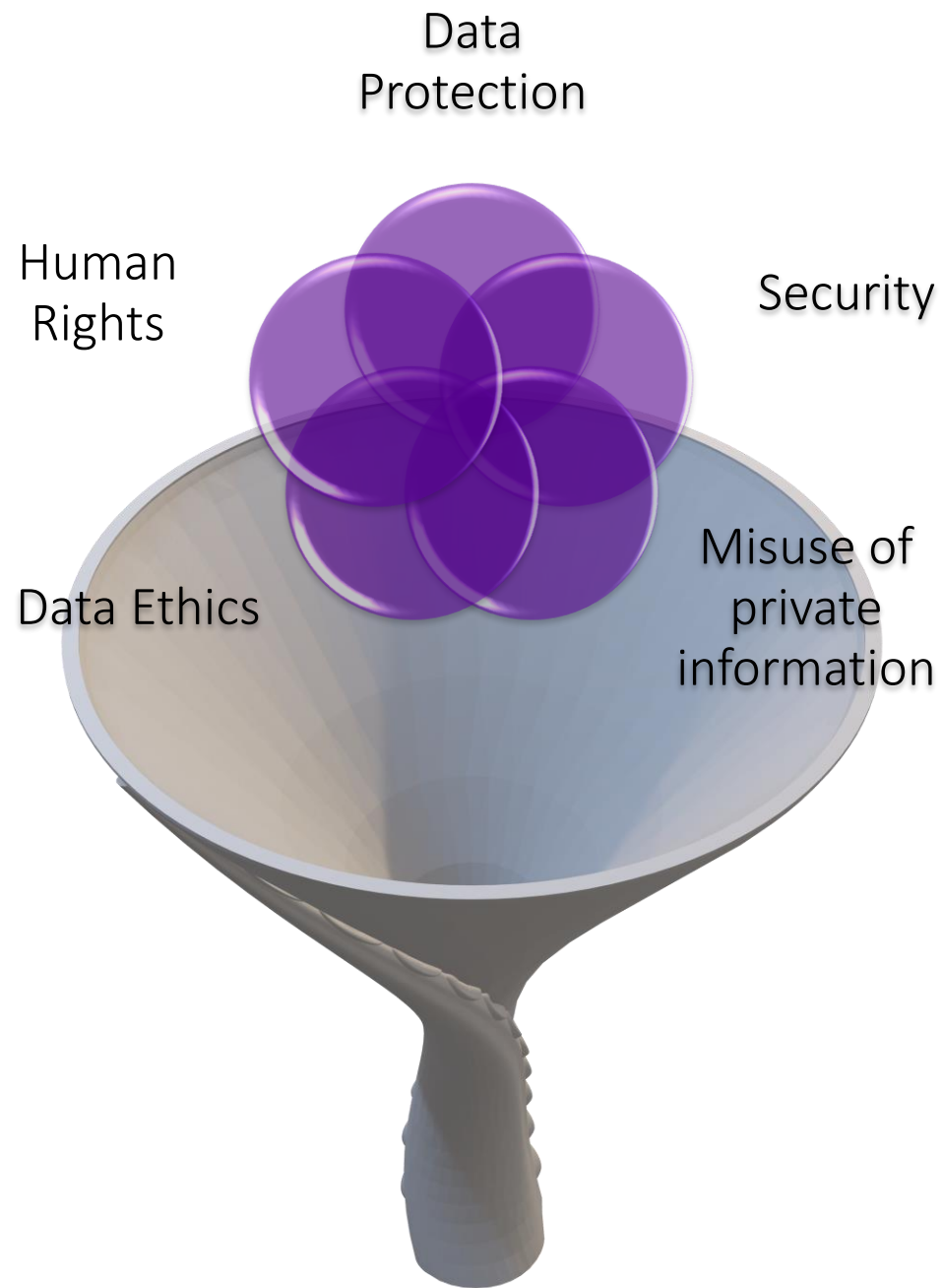
Privacy in the Telecoms World

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Introduction – What is Privacy About?

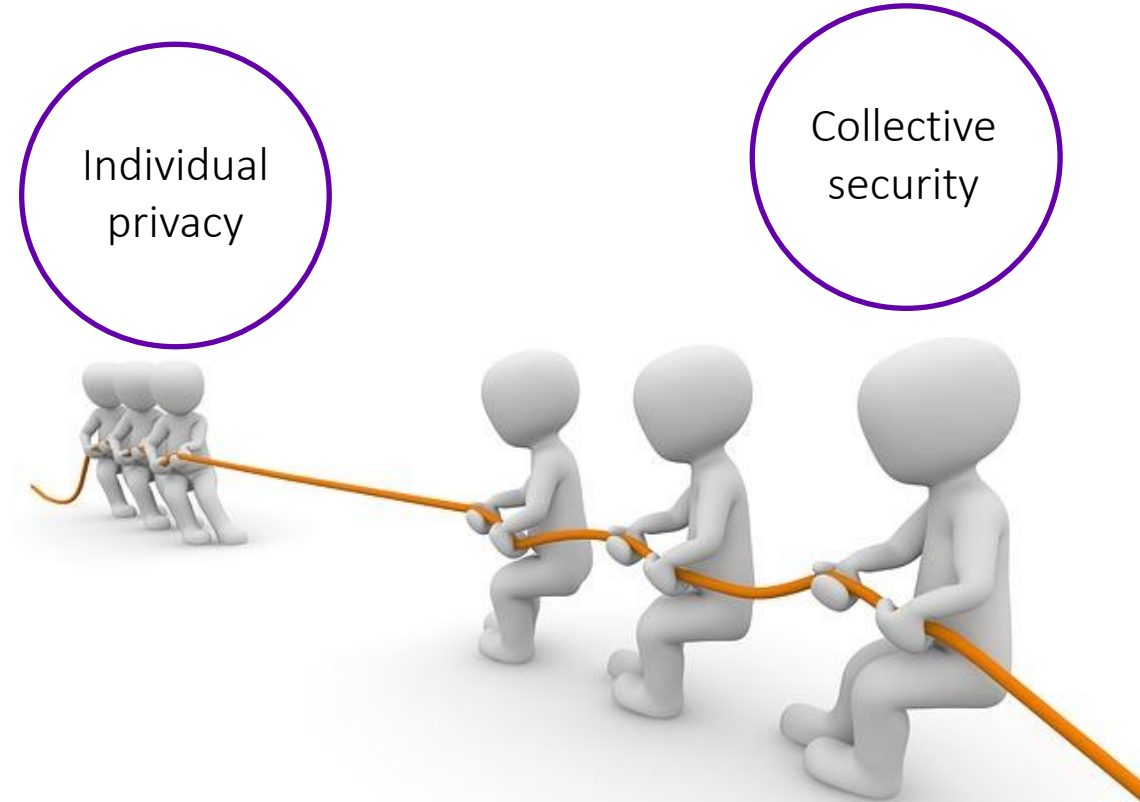


Scope

Privacy and Human Rights
Data Protection and GDPR
Schrems II
The Investigatory Powers Act and *Privacy International*

Privacy and Telecoms Security
Offensive Security and the Computer Misuse Act
Product Security

Data Ethics



Where does the UK legal concept of privacy come from?

There is no single law of privacy in the UK

Legal right to privacy is drawn from various sources

- European Convention on Human Rights and the Human Rights Act 1998
- Retained EU law
- English law of civil wrongs (tort)
- Criminal law

In addition data protection laws such as the UK GDPR and the Data Protection Act 2018 have a lot of overlap with privacy rights

In the telecoms industry we are mostly frequently dealing with the last of these categories, but the others also have significant impact



Privacy in the context of data protection

GDPR – directly applicable EU law in EU member states, now UK GDPR following Brexit

Data Protection Act 2018 – governs data protection in areas where GDPR permits member states to make their own laws

These include laws supplementing the UK GDPR, and laws which govern data processing by law enforcement and the intelligence agencies, which are otherwise outside the scope of the GDPR



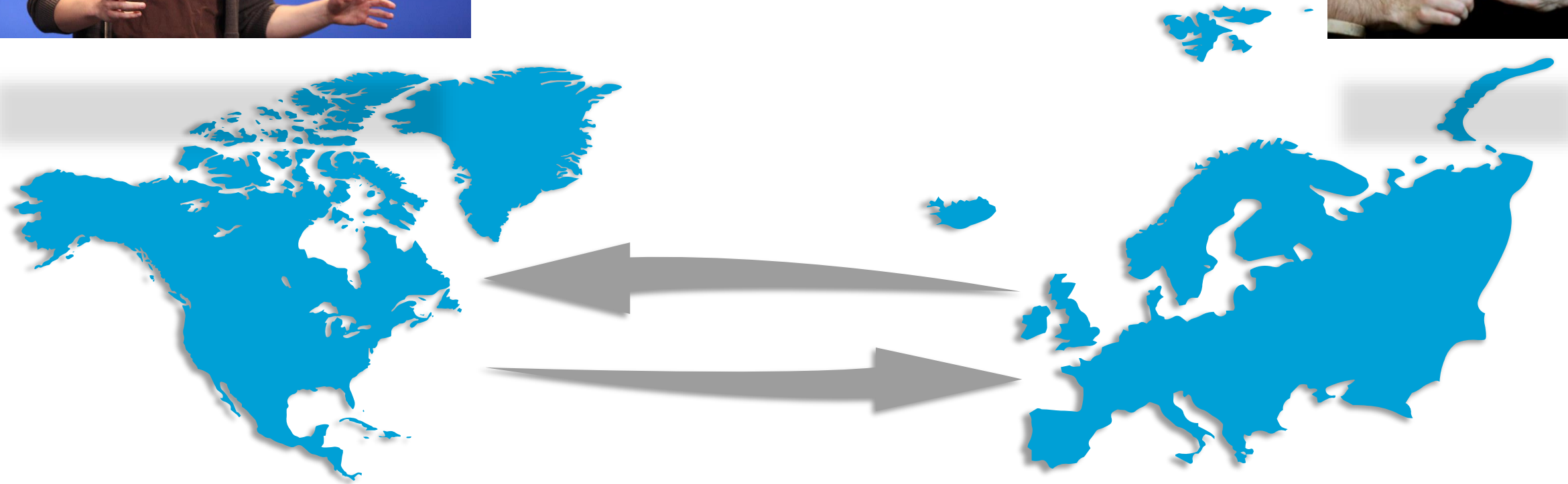
Privacy and Electronic Communications (EC Directive) Regulations 2003

All of these permeate all aspects of telecoms, but are relevant to this audience particularly in the areas of product development, data security, data transfer and data breach

Why EU law is still important... the question of adequacy



Schrems II

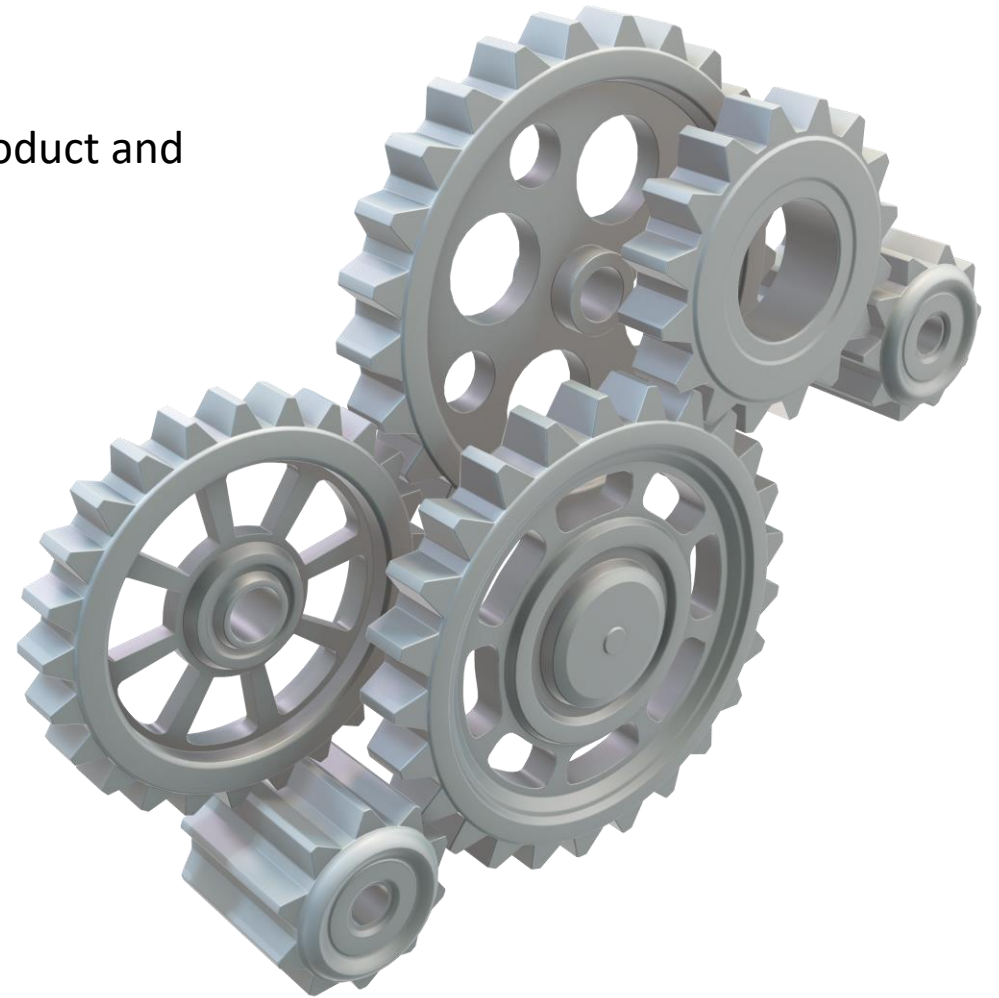


Privacy and Data Protection “by Design and Default”

Flows from the GDPR requirement to put in place appropriate technical and organisational measures to protect personal data

GDPR formalises the principle of data protection being integral to product and service design

Privacy Impact Assessment and the Concept to Market process



Privacy and government powers

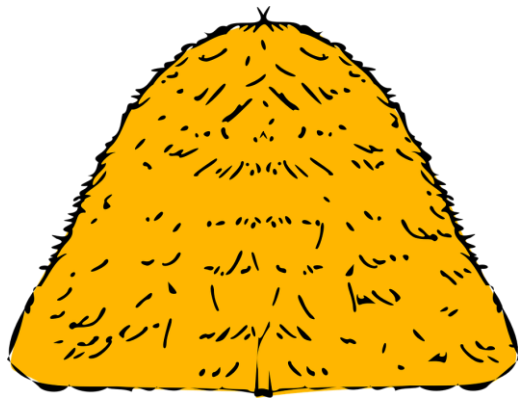
Law reform

The Snowden disclosures and litigation

Investigatory Powers Act 2016

Government review of the IPA

The *Privacy International* case



Privacy and network security

The Telecommunications (Security) Act 2021 and
the Telecoms Security Requirements

Offensive Security and the Computer Misuse Act

Device security



TSA framework

Telecoms (Security) Act 2021 (provides the overall legal framework)

TSA gives the Secretary of State the power to issue a Code of Practice under the Communications Act

Detail of the Code comes from the TSRs – produced by NCSC following DCMS supply chain review

Telecoms Security Requirements

Code of Practice

Covers detailed network security requirements

TSA gives the Secretary of State the power to issue a Designated Vendor Direction

Draft Designated Vendor Direction

Covers Huawei restrictions

TSA gives the Secretary of State power to make Regulations

Draft Electronic Communications (Security Measures) Regulations

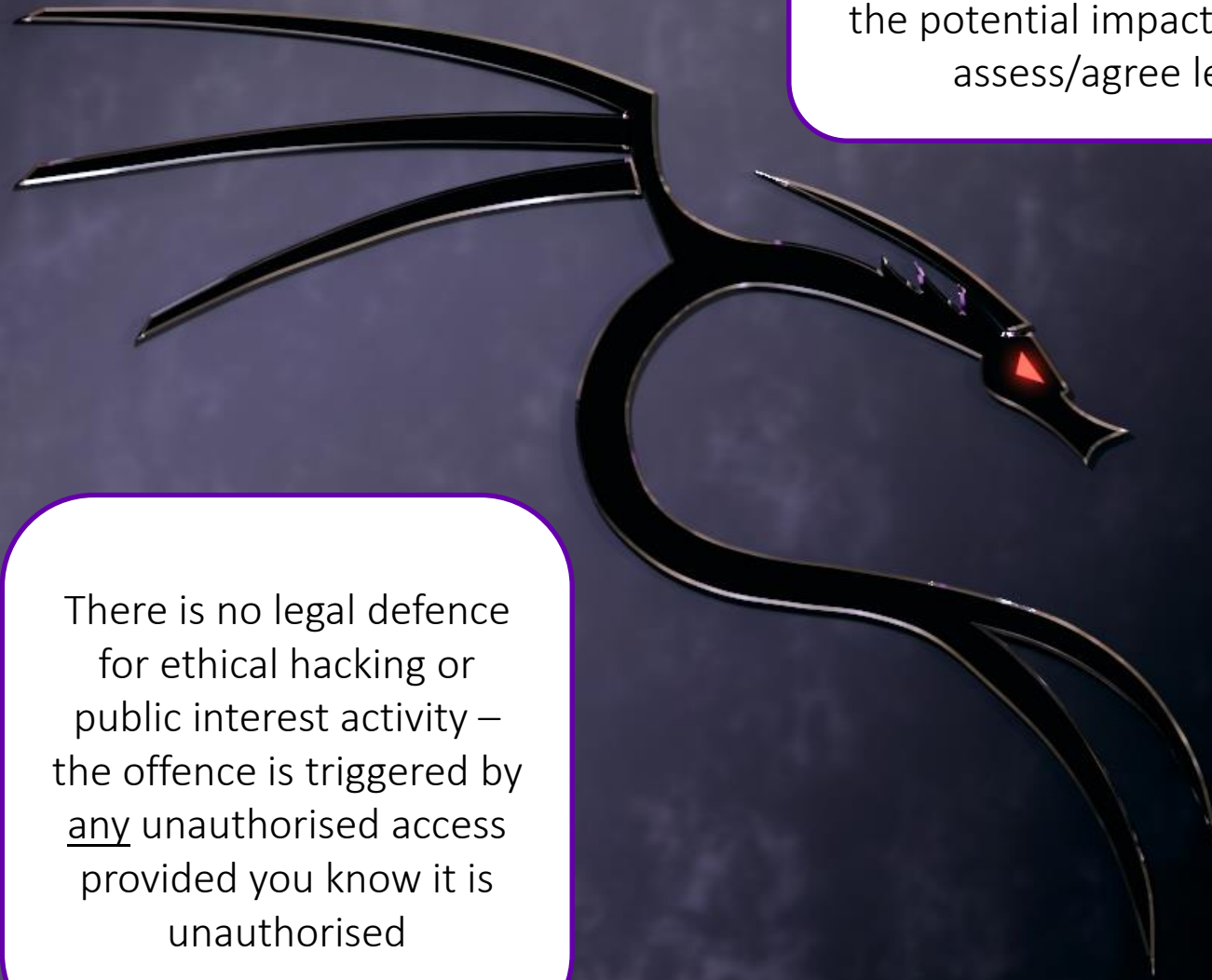
Covers implementation of security measures and response to security incidents

Offensive Security and Penetration Testing

The dynamic nature of offensive security makes it hard to get consent or carry out proper due diligence on the potential impact, so difficult to assess/agree legal risks

It is a criminal offence to carry out offensive security activity on a computer system if you know it is unauthorised. BT can test its own infrastructure but not that controlled by a third party (without their prior consent)

There is no legal defence for ethical hacking or public interest activity – the offence is triggered by any unauthorised access provided you know it is unauthorised



The growth of data ethics



The tension between privacy and security

Product Security and Telecommunications Infrastructure Bill

The growth of strong encryption and new user privacy features benefits individual privacy... but can cause legal issues for wider security

Thank you