

Extraterritorial interception and communications data acquisition & Bird & Bird

CLIP Launch Workshop

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Data Retention and Investigatory Powers Act 2014

CHAPTER 27

Terminology

"Jurisdiction"

International law:

A state's power to exercise
authority over individuals,
conduct and events

(R v Hape)

State-centric

State-centric

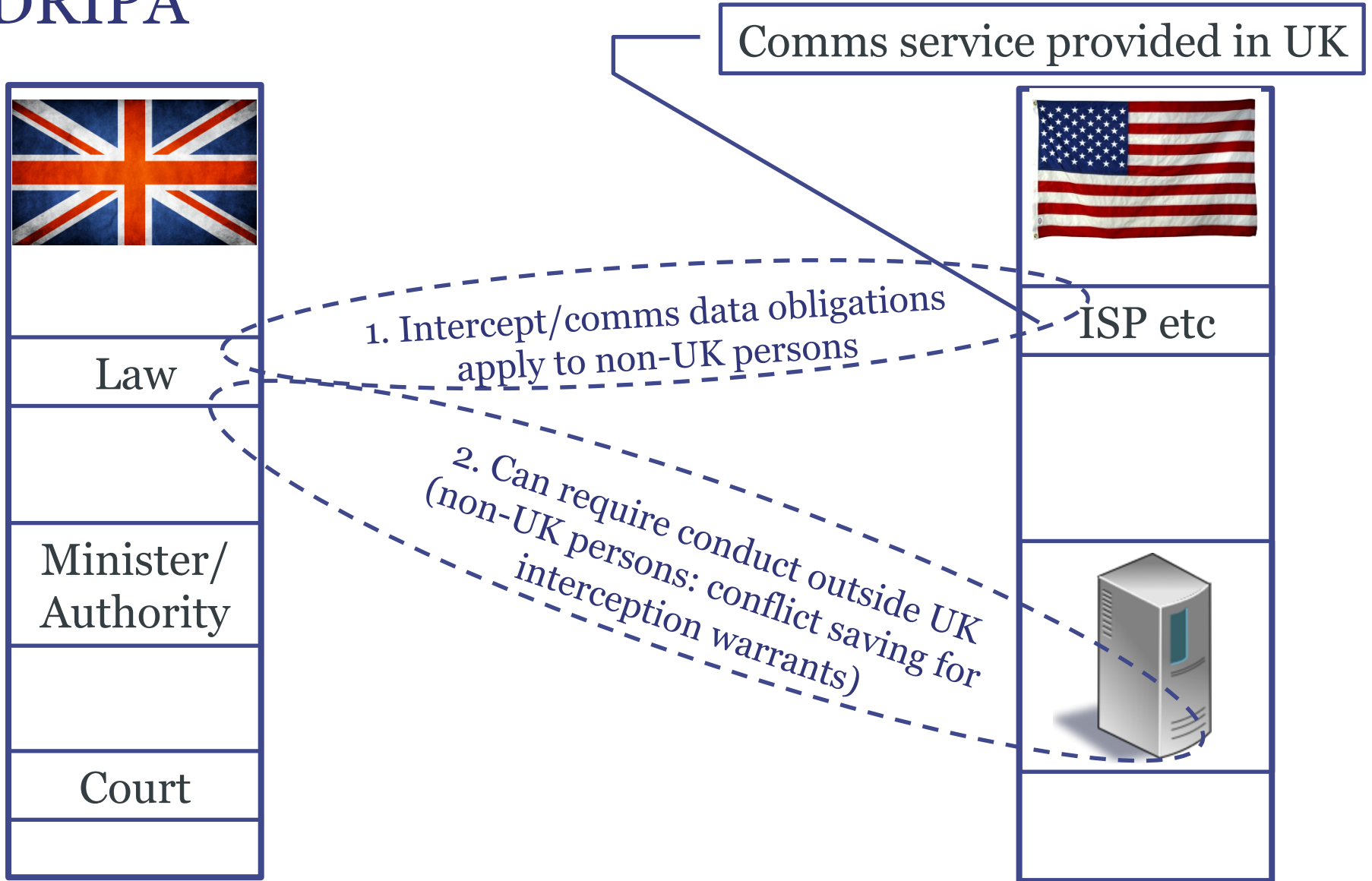
Territorial sovereignty

Jurisdiction in international law

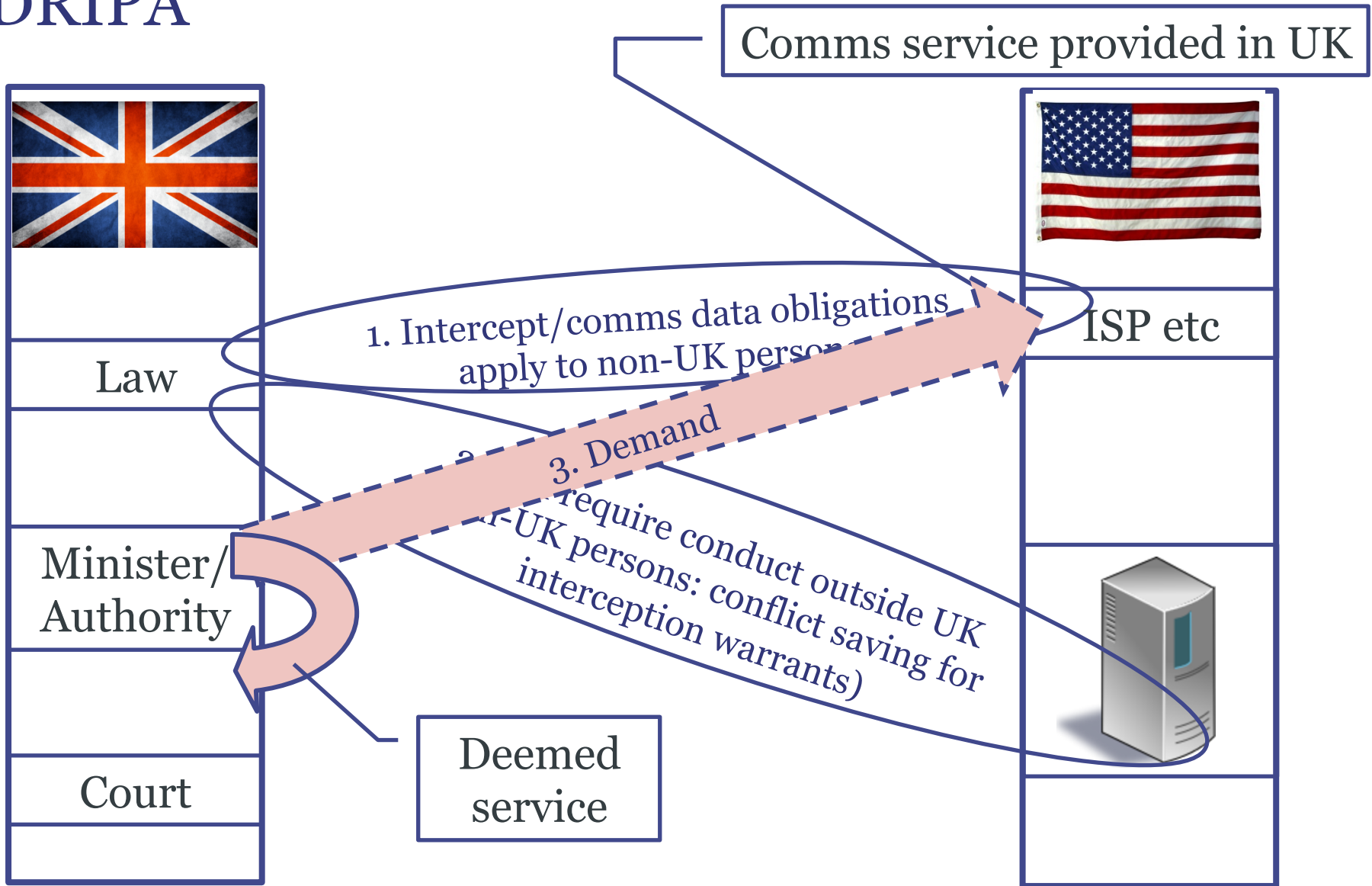
- **Prescriptive** jurisdiction (making the law)
 - [Thou shalt not...] [Thou shalt...] [If X, then Y...]
- **Adjudicative** jurisdiction (court)
 - Jurisdiction to hear and determine...
- **Executive/enforcement** jurisdiction (police, Ministers, officials, prosecutors, courts)
 - **Enforcement**
 - Execution of arrest warrant, forfeiture, extradition etc
 - **Investigatory**
 - Search warrant, production order, interception warrant, communications data notice
- Extraterritorial jurisdiction?
 - Territorial sovereignty of other state
 - Location of [Person] [Conduct] [Event]

DRIPA

DRIPA



DRIPA



DRIPA

Comms service provided in UK



Law

Minister/
Authority

Court

Offence - failure to
comply
(interception only)

4. Injunction - failure to comply
(including non-UK persons)



ISP etc



(D)RIPA extraterritoriality

(D)RIPA element	Nature	Person/Location		Conduct/Location	
Communications Service Provider	General scope of RIPA	Provider	Not specified	[public] telecommunications service	Includes UK element
Obligation to assist with warrant/ comply with notice	Contingently prescriptive	[public] CSP	Includes non-UK persons (DRIPA 4(3), 4(6), 4(7)(a), 4(9))	No obligation without service of warrant or notice	
Service of warrant/ notice	Crystallises prescriptive obligation		Deemed service on non-UK persons (DRIPA 4(2), 4(6), 4(8))	Steps to give effect to warrant or comply with notice	Can require conduct outside UK (DRIPA 4(2), 4(6), 4(8))
Conflicting non-UK law	Qualifies crystallised prescriptive obligation		Non-UK person (DRIPA 4(4))		Regard to law of country in which steps to be taken (interception only)
Criminal offence (interception)	Prescriptive		Not specified. Presumption against non-UK?		
Injunction (all)	Prescriptive		Includes non-UK persons (DRIPA 4(5), 4(7), 4(10))		

Thank you **& Bird & Bird**

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