Professors T. Christakis & P. Swire

☞ www.crossborderdataforum.org

The 'Affected State'
A Useful Concept for Cross Border Access to E-evidence

Research Fellows, CBDF
www.crossborderdataforum.org
E-Evidence, CLOUD Act, US/UK, EU/US, Budapest…

Christakis : 'Divergence of Opinions on E-Evidence' (Oct. 2018)
Swire : 'Nationality & Surveillance' (Jan. 2019)
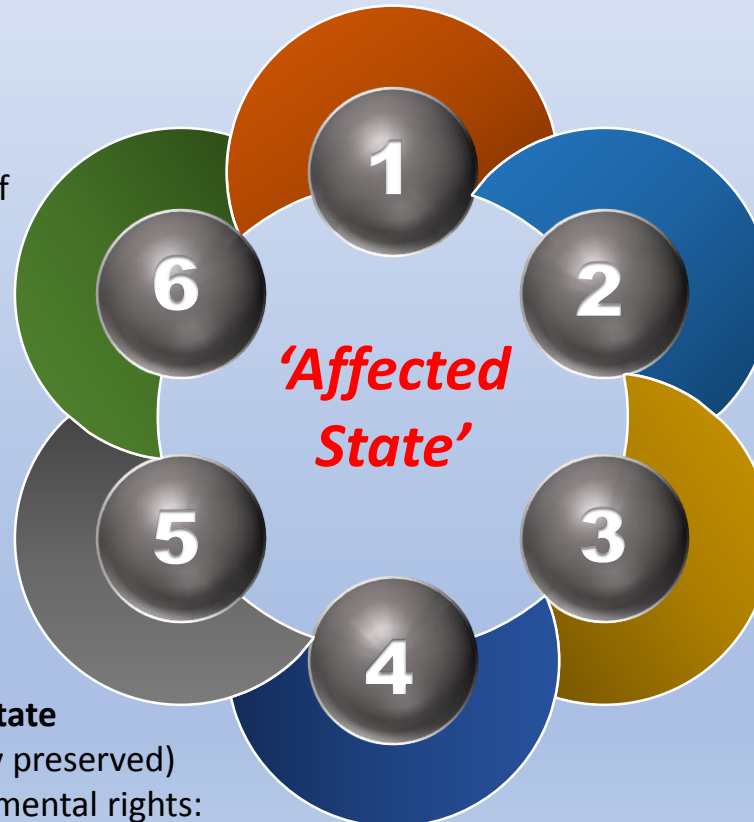**Efficient** – notice in <5% of cases
Rights protected – Affected State protects rights of data subject

Service providers usually **can** locate "Affected State": geolocation, IP addresses, subscriber data...
Practical history: of *"US person"* or not
US/UK CLOUD Agreement : protections based on **location of the targeted person**
LIBE E-Evidence draft: notice to Affected State

Goals for notice regime:
(1) **not MLAT**
(2) **low burden of notice**
(3) **fundamental rights** - apply to content, perhaps traffic data

'Affected State'

Affected State → location of the targeted person
NOT – State of data storage
NOT – State of service provider

Burden low, **>95% Issuing=Affected State**
✓ Notice in <5% of cases (=efficiency preserved)
✓ Affected State can examine fundamental rights:
   Journalists, Lawyers, Parliamentarians, etc.
✓ Traditional "**protective functions**" of Affected State