

Where is the evidence?  
Territoriality and jurisdiction in  
cyberspace

or:

***“Help!***

***I’m lost in the middle of nowhere!”***

1



*“no where” is here”*

- Need to obtain evidence outside the borders of the State
- **No choice** – crime is no longer *“national”*



**There's  
No Such Place  
As Far Away**

**RICHARD BACH**

AUTHOR OF  
JONATHAN LIVINGSTON SEAGULL and ILLUSIONS

ILLUSTRATED BY  
RON WEGEN

1



- More transnational crimes
- Digital evidence in all the crimes
- Global services are everywhere (email, cloud services, used everywhere)



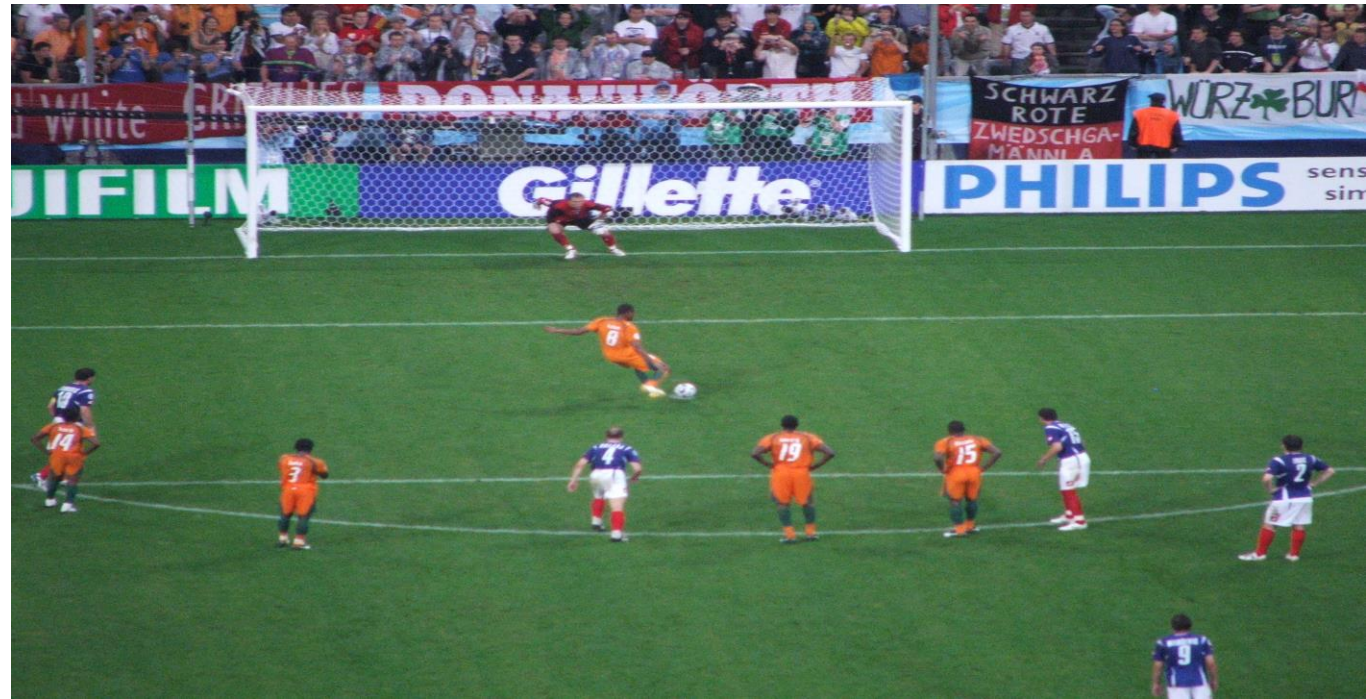
# THE GOALIE'S ANXIETY AT THE PENALTY KICK



A WIM WENDERS FILM

- international cooperation?
- direct access?
- informal request to service providers?

2





# THE GOALIE'S ANXIETY AT THE PENALTY KICK



A WIM WENDERS FILM

- Most of the cases require obtaining e-evidence transborder
- MLA is expanding brutally!
- The current system cannot resist
- Data flows across the globe in one second, while obtaining it, by law enforcement, may take one year

2



# THE GOALIE'S ANXIETY AT THE PENALTY KICK



A WIM WENDERS FILM

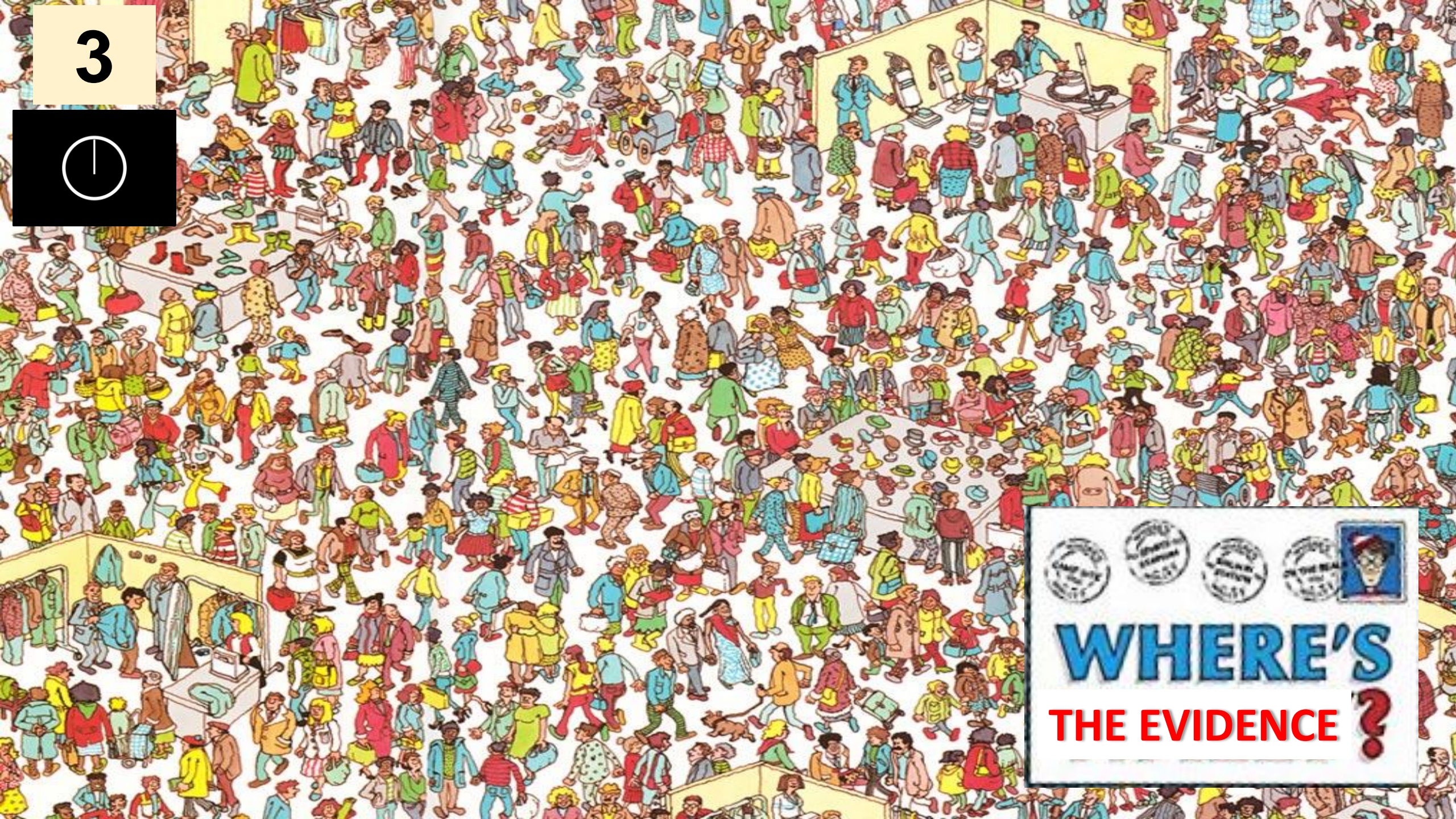
2



- conflicting regulations
- complying with a request for data in one country implies breaking the law in another



3



SEARCHED INDEXED  
SERIALIZED FILED  
FBI - NEW YORK



**WHERE'S**  
**THE EVIDENCE ?**



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF

In addition, the Government argues that Google's architecture creates an

In re Search Warrant No. 16-960-M-01  
to Google

insurmountable obstacle for the Government to overcome in the MLAT process. The location of

In re Search Warrant No. 16-960-M-01  
to Google

**The data, however, is a moving target:** stored one day in a data center in Finland or Singapore; and automatically moved the next day to a new data center in Chile, or Belgium. Further complicating things is that Google user data - such as an e-mail, or an e-mail attachment - **is not stored as one single, cohesive digital file;** instead, Google stores individual data files in multiple data "shards," each separate shard being stored in separate locations around the world. And, Google cannot even determine where its separate data shards are stored around the world at any given time; and, even if one shard were to stay in one place, without *all* of the shards being collected and put together at once to form the actual digital file, each shard alone is a useless piece of coded gibberish. Of course, each shard **might move instantaneously to somewhere else; and then to somewhere else; and so on, and so forth.**

THOMAS J. COOPER  
United States District Judge

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Google Inc.

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that it could confirm is stored on its servers located in the United States. (N.T. 1/12/17 at 13.)



4



Still physical location

Still geographic limits

Still political borders

4



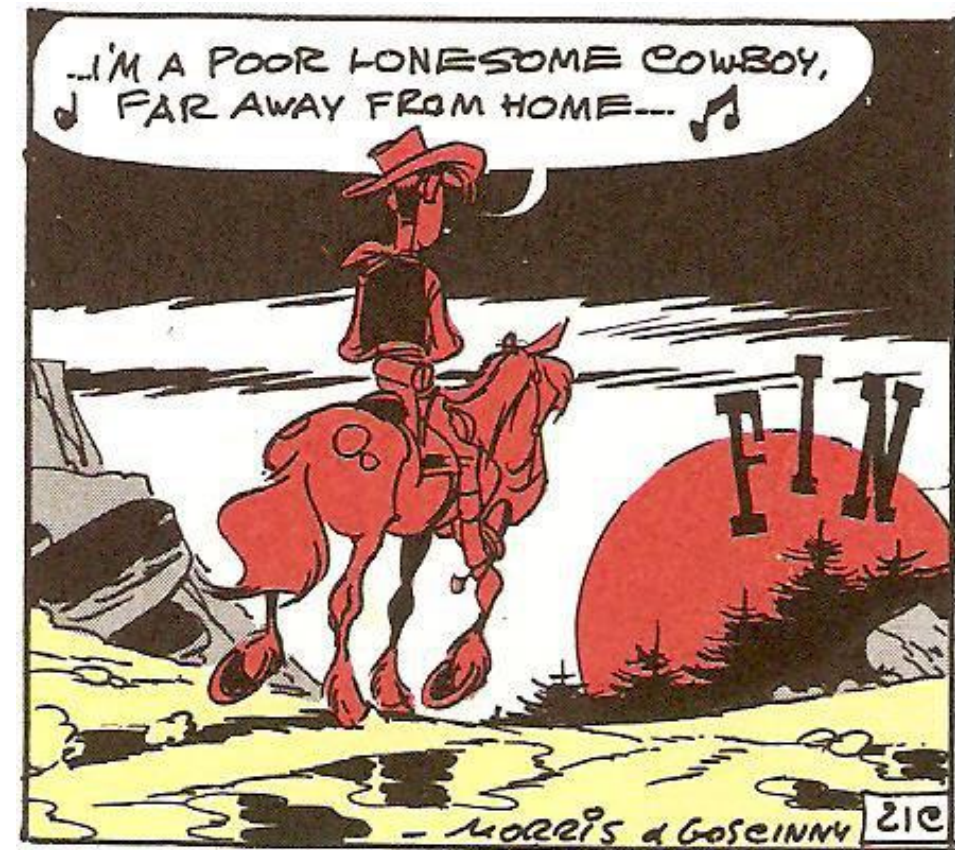
Evidence is:

in multiple locations  
undetermined locations

need **new factors**  
(besides territoriality) to  
determine the location  
of the data



4



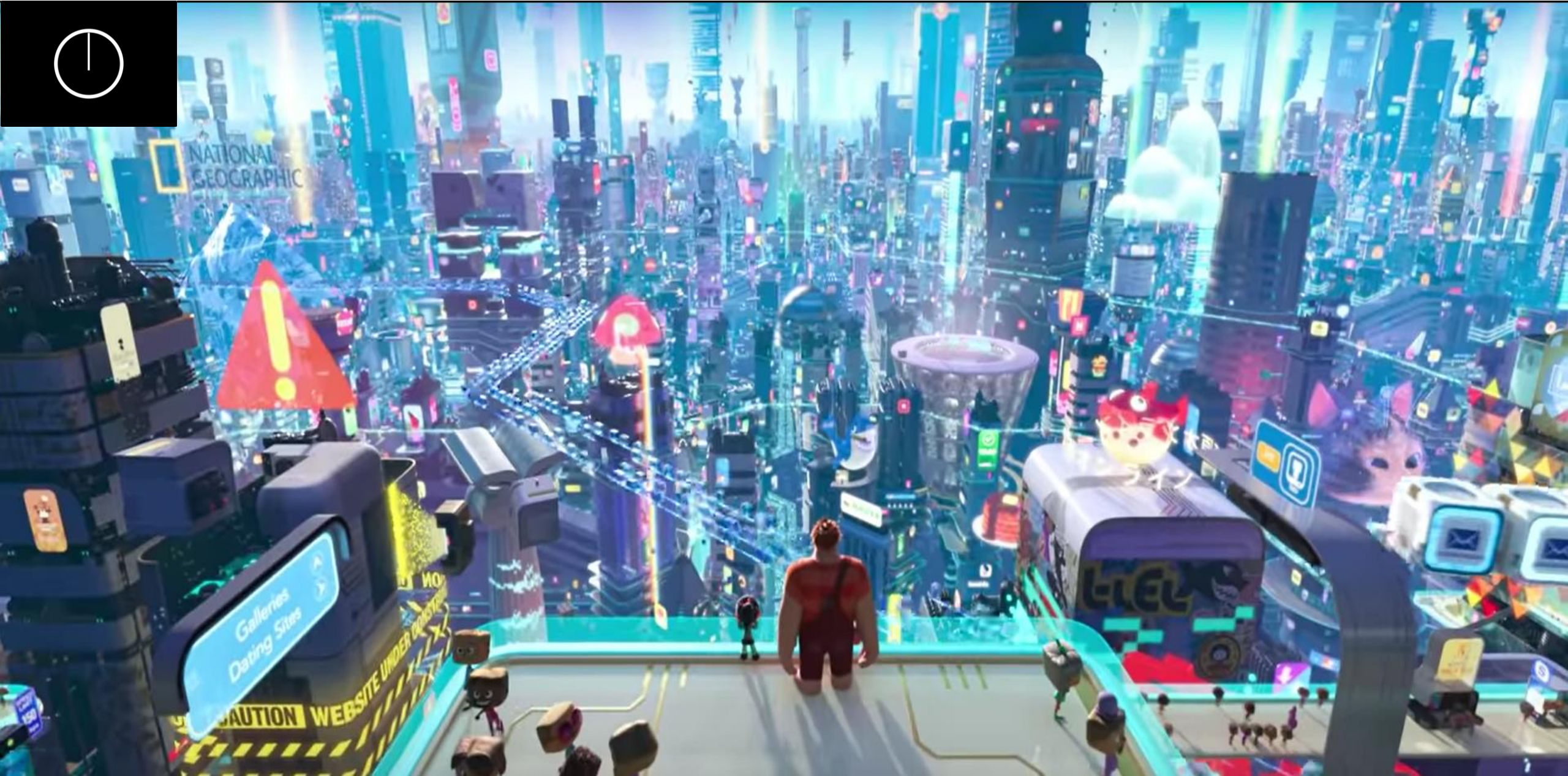
Also a **new approach**

- new ways to access to data
- direct/transborder



5

...and the evidence stored by global providers?





5

...where are our Facebook posts?





5



...location of the posts?

**Jurisdiction?**

California?

Sweden?

Ireland?

Your country (Art 18,1 b BC)?

**To whom, address** a request?

How to enforce it?



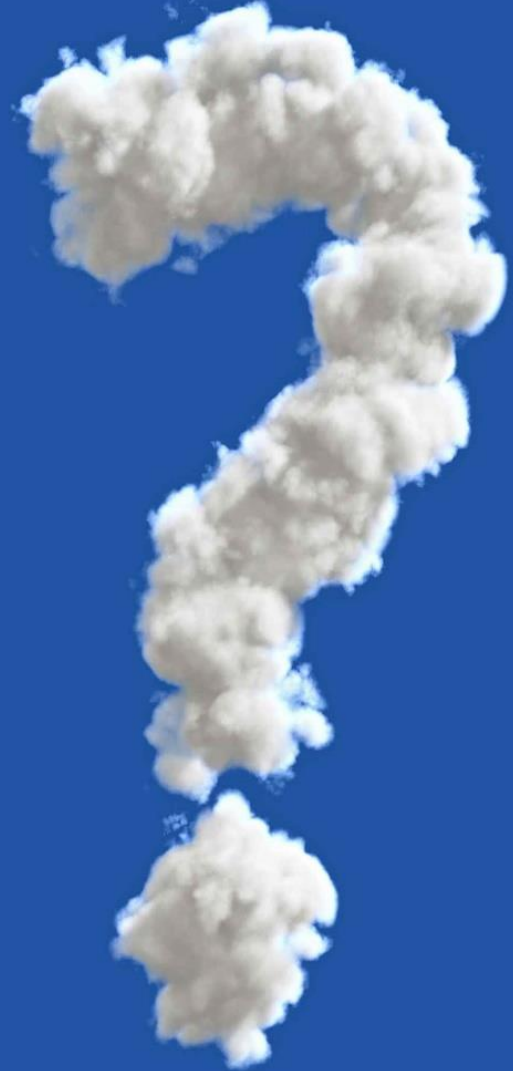


6



*“here” is “no where”*

- Please, can you tell me the way to the dark web?





7



Some positive moves

- EIO
- EU E-Evidence package
- Future Additional Protocol to the Budapest Convention



**FRANK SINATRA – MY WAY**

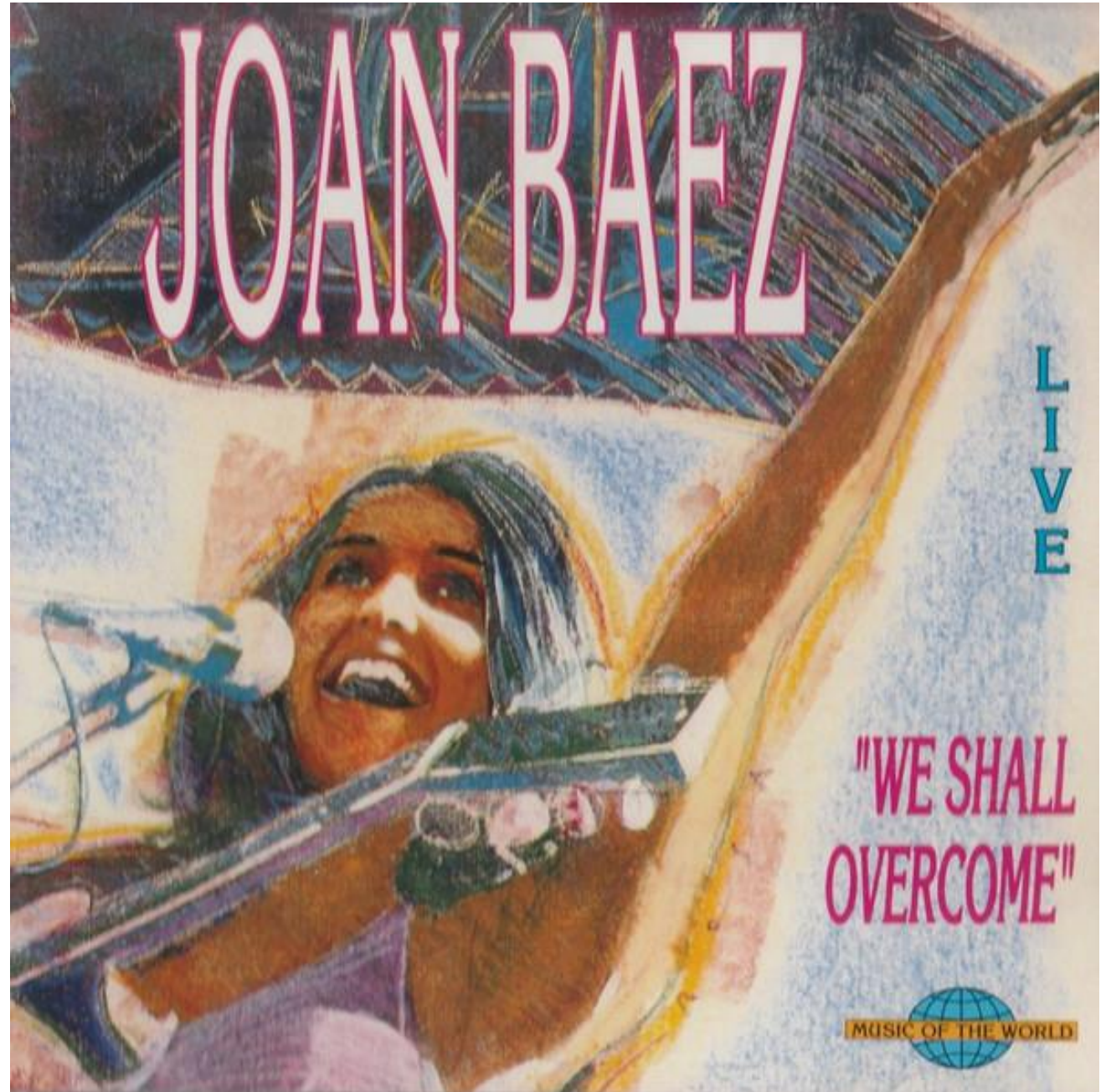
And now, the end is near;  
And so I face the final curtain.

7



*We shall overcome...*

- direct cooperation with international providers (subscriber information)
- simplified MLA requests
- international production orders
- the *power of disposal*, as jurisdiction connecting factor







- Thank you!
- Questions?