

Private Surveillance

Professor Grimmelmann

Internet Law

Fall 2007

Class 13

Where we are

- Introduction
- Part I: Public Law
 - Jurisdiction
 - Free Speech
 - Intermediaries
 - Privacy
- Part II: Private Law

Road map

**What kind
of data?**

Content

Non-content

To whom?

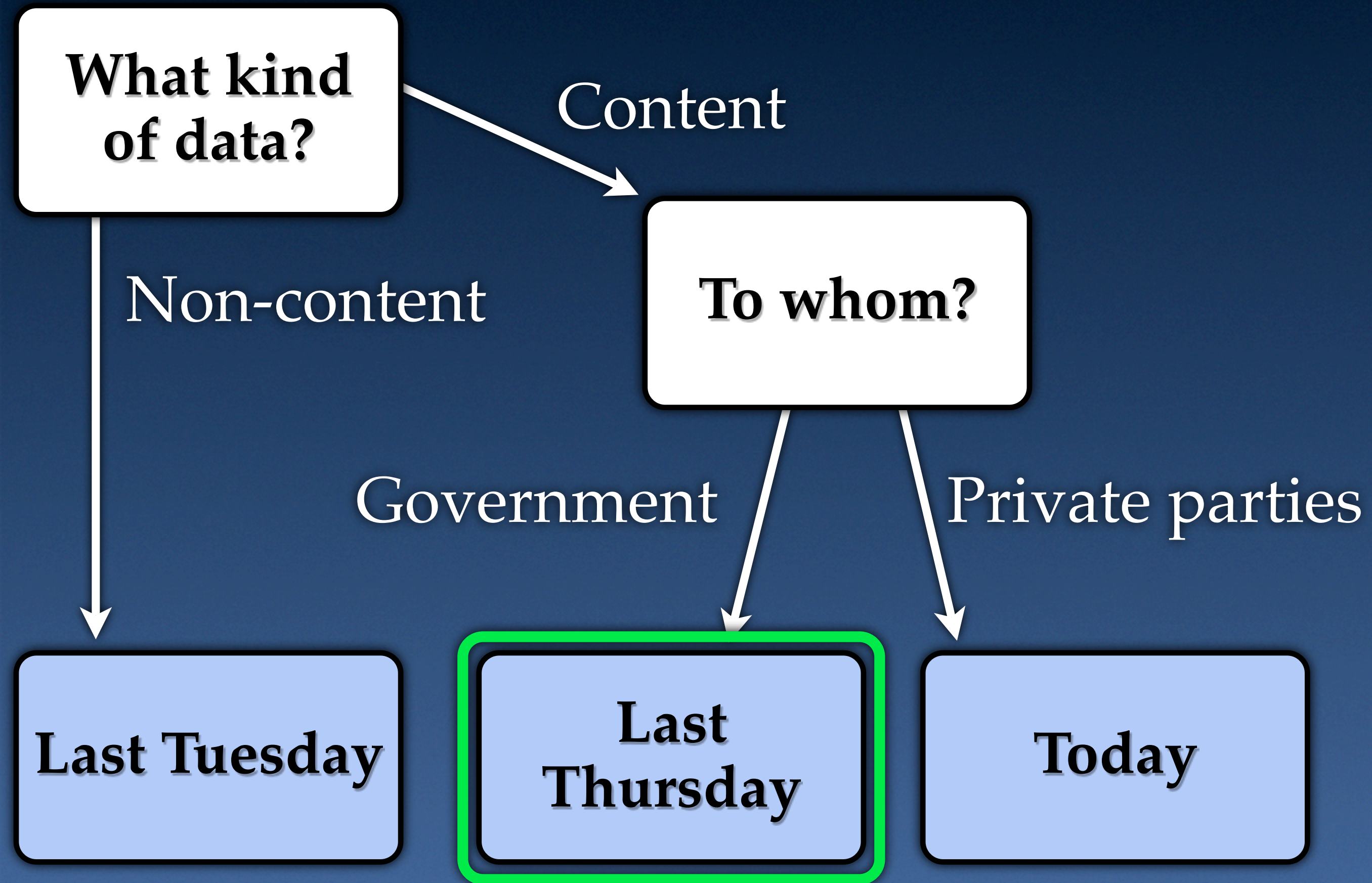
Government

Private parties

Last Tuesday

**Last
Thursday**

Today



In today's class

- Commercial profiling
 - Cookies and online ads
- Three privacy stories
 - Privacy and lawyers
 - Contextual integrity
 - The end of privacy?

A reminder re: privacy laws

- You. Can. Read.
 - The statutes are complex and changing
 - This isn't a privacy course
 - In practice, you'll look it up
- Today, we're focusing on *controversies* rather than on statutory details
- For more details, read Solove's casebook

Commercial profiling

Dwyer v. American Express

- American Express analyzes its customers' purchasing habits to generate lists of names, which it sells to marketers
- AmEx tells customers that it might disclose their names
 - But it doesn't say anything about analyzing their purchasing habits
- *Held*: plaintiffs suffered no actionable harm

Dwyer v. American Express

What's the
harm?

Some possible harms

- No one should know that much about me
- Specific purchases might be embarrassing
- They might make mistakes
- The bad guys might find out
- They might sell me stuff I don't want

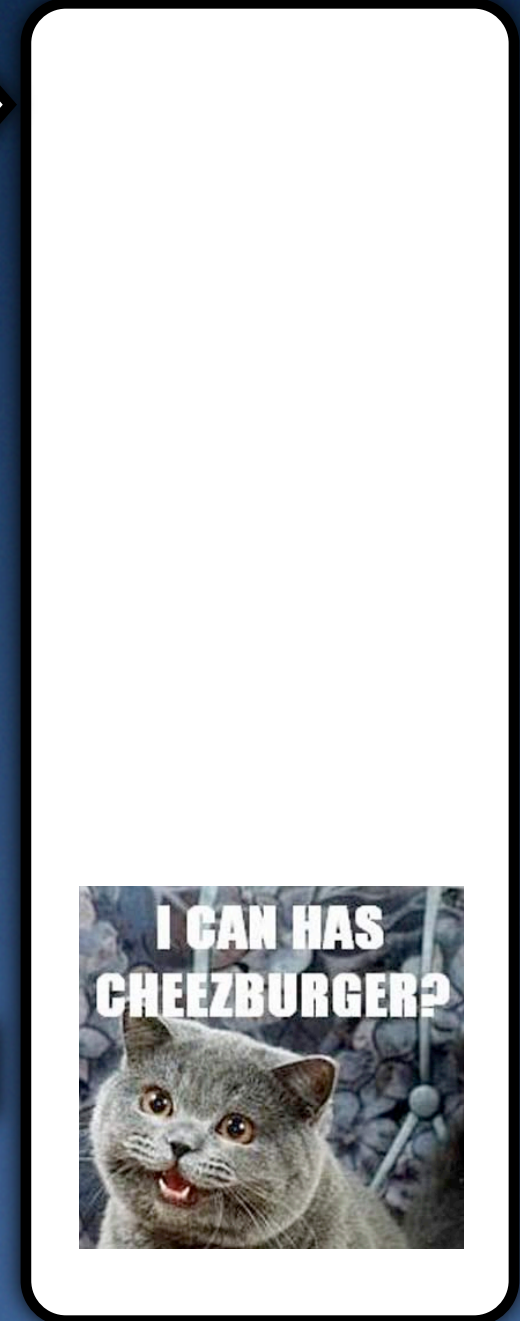
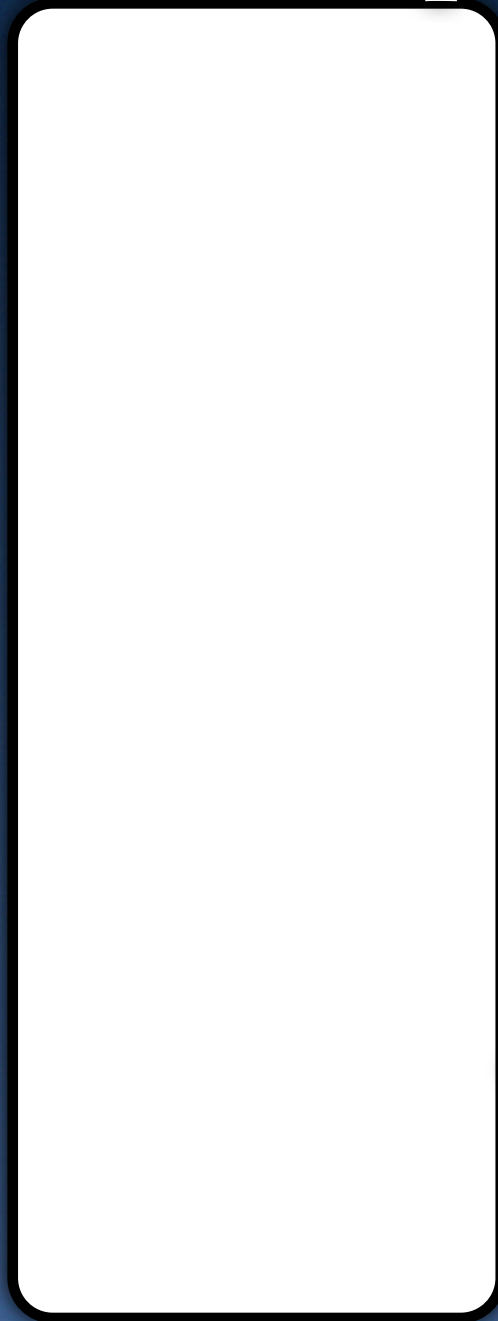
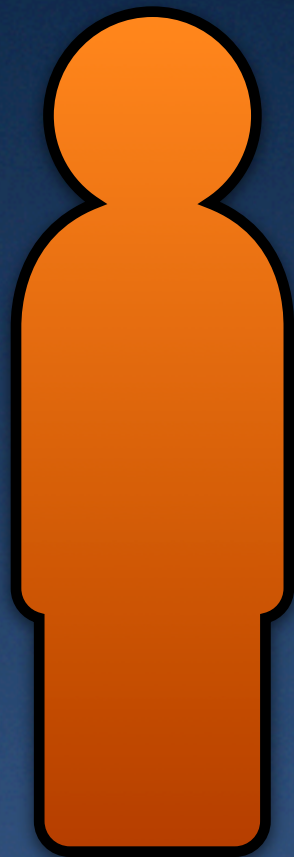
Which of these bother you?

In re DoubleClick

- There are *two* pieces of technology at work in this case
 - Cookies
 - Third-party ads

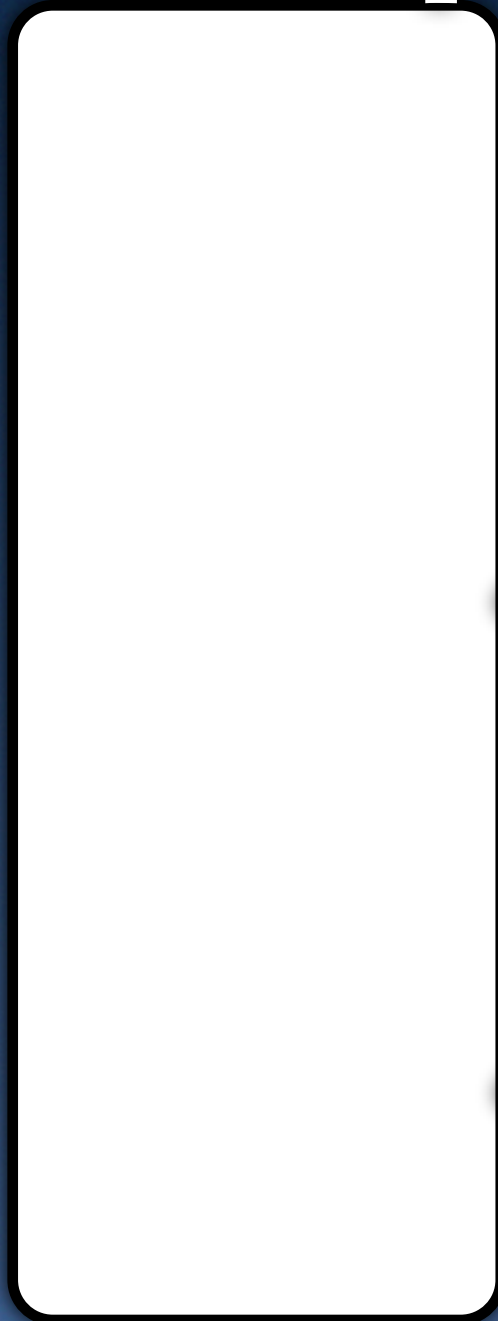
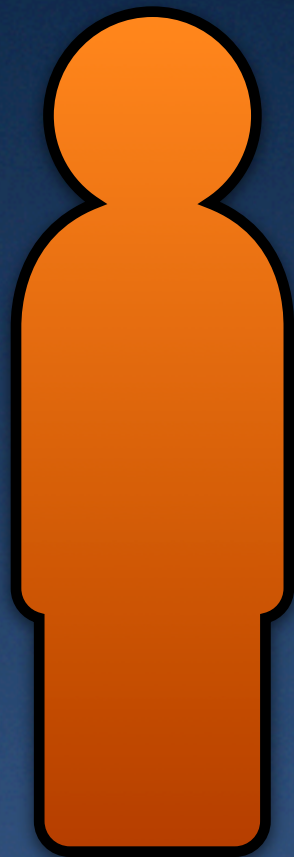
Without cookies

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Setting a cookie

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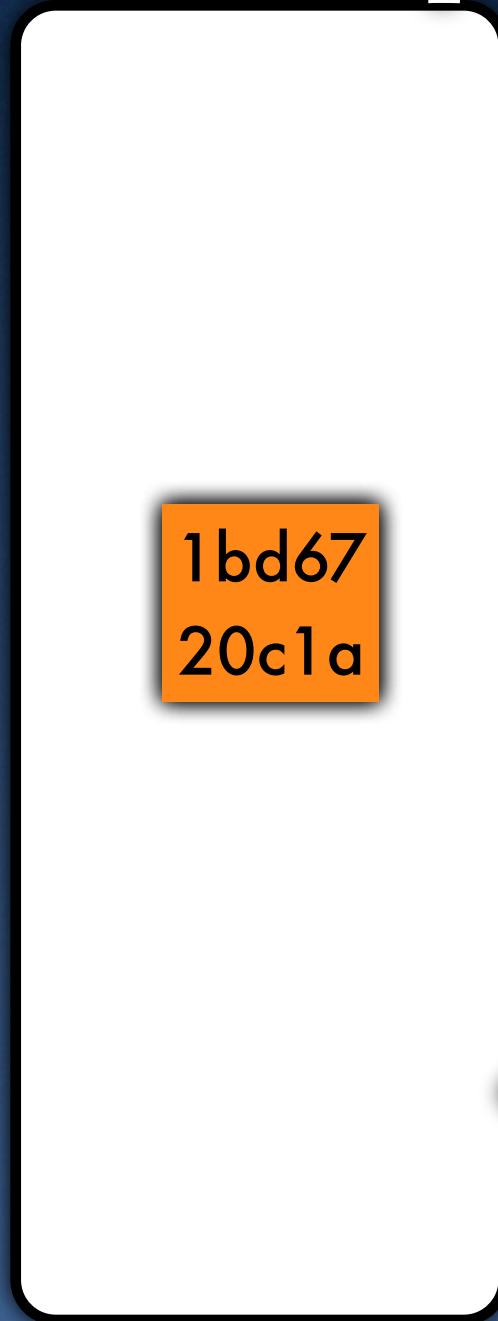
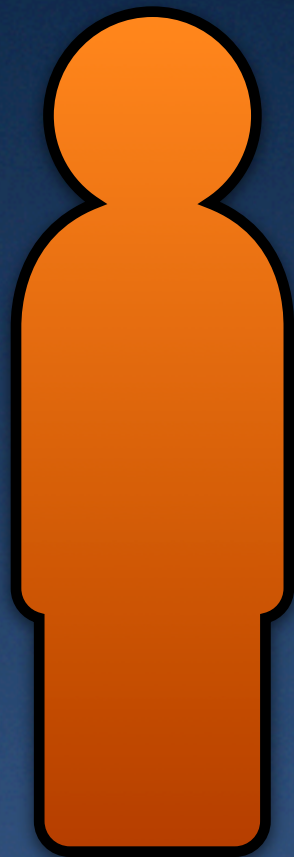


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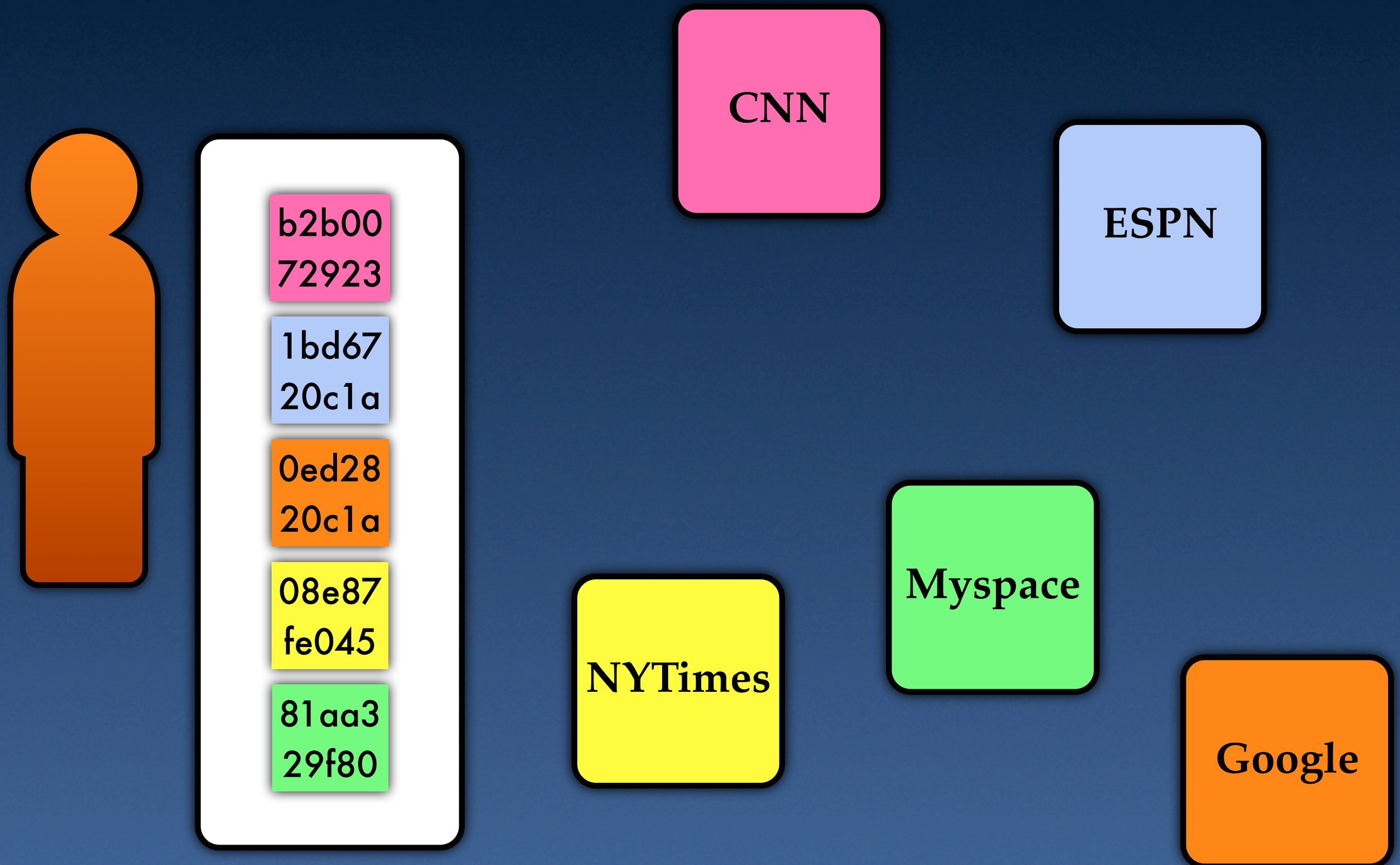


Reading a cookie

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Cookies are private to a given site



Why use cookies?

- Keep track of things for the user
 - E.g., contents of a shopping cart
- Store preferences across sessions
 - E.g. what city's weather to show
- Create a marketing profile

Third-party ads

Slate Magazine

http://slate.com/ RSS banner ads

Slate

Tuesday, Oct. 9, 2007

ABOUT US
MAKE SLATE MY HOME PAGE

SEARCH WEDNESDAY THURSDAY FRIDAY SAT/SUN MONDAY TUESDAY Ask Web search SEARCH

- News & Politics
- Arts & Life
- Business & Tech
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- Sports
- Slate on NPR

Don't Let Them KILL HER
The Dutch should keep protecting Ayaan Hirsi Ali from Islamist terrorists.
BY ANNE APPLEBAUM
And if the Dutch won't, the United States must.
BY CHRISTOPHER HITCHENS
PLUS: Is Fred Thompson Ready for the GOP Debate?

Doubleclick.com

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Here To Stay

TODAY'S BLOGS
Unhappy Together

EXPLAINER
Flaxseed or Steroids?

OTHER MAGAZINES
Down the Drain

TODAY'S DOONESBURY

TODAY'S PICTURES

BLOGS +

- PRESS BOX
Rupert Murdoch, Closet Liberal
- KAUSFILES
The Baracktrackers
- TRAILHEAD
What's the Matter

Oliver Sacks' Love Letter to Music

Why Would Marlon Jones Want To Take Flaxseed Oil?

Apple Picking Is for Suckers

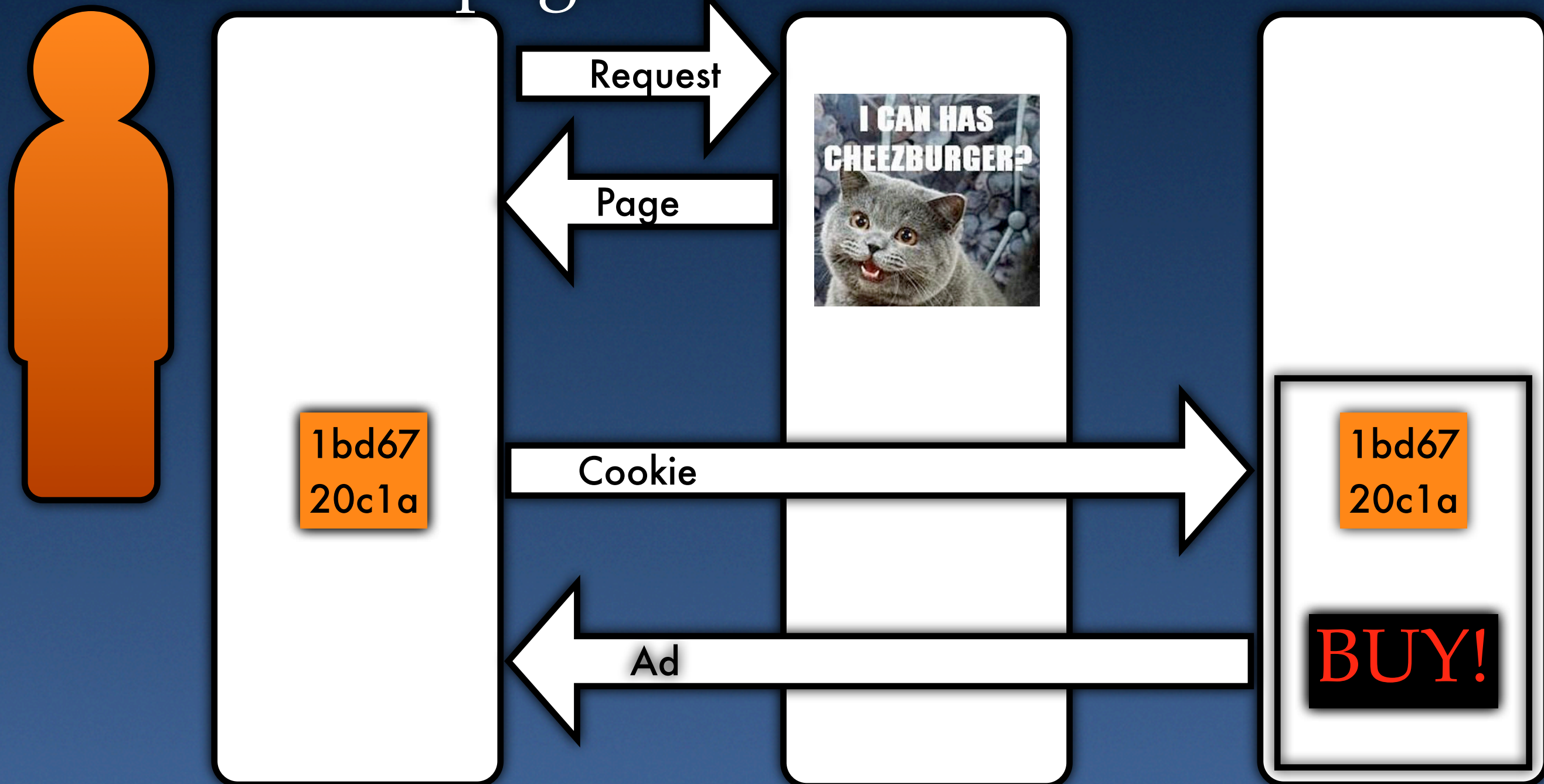
Walt, My Grandpa Is Actually My Dad?

What Happens When Cat Ladies Get Married

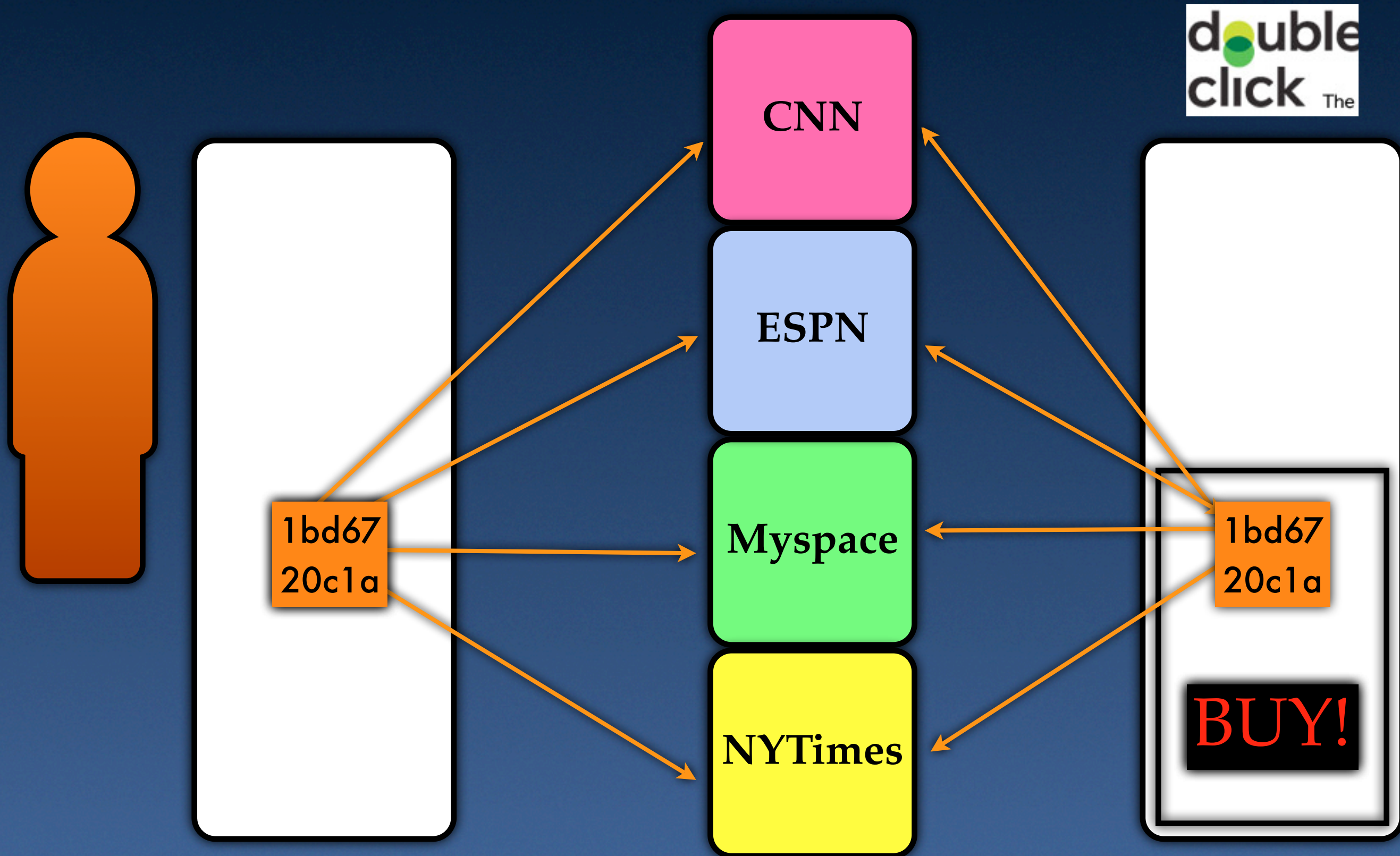
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Third-party ads with cookies

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Third-party ad networks



Why use third-party ad networks?

- Outsource the work of selling ads and creating infrastructure to specialists
- Track web users across various sites
 - Customized profiles for individual users
 - Massive demographic analysis
 - Targeted ads
- Blackmail?

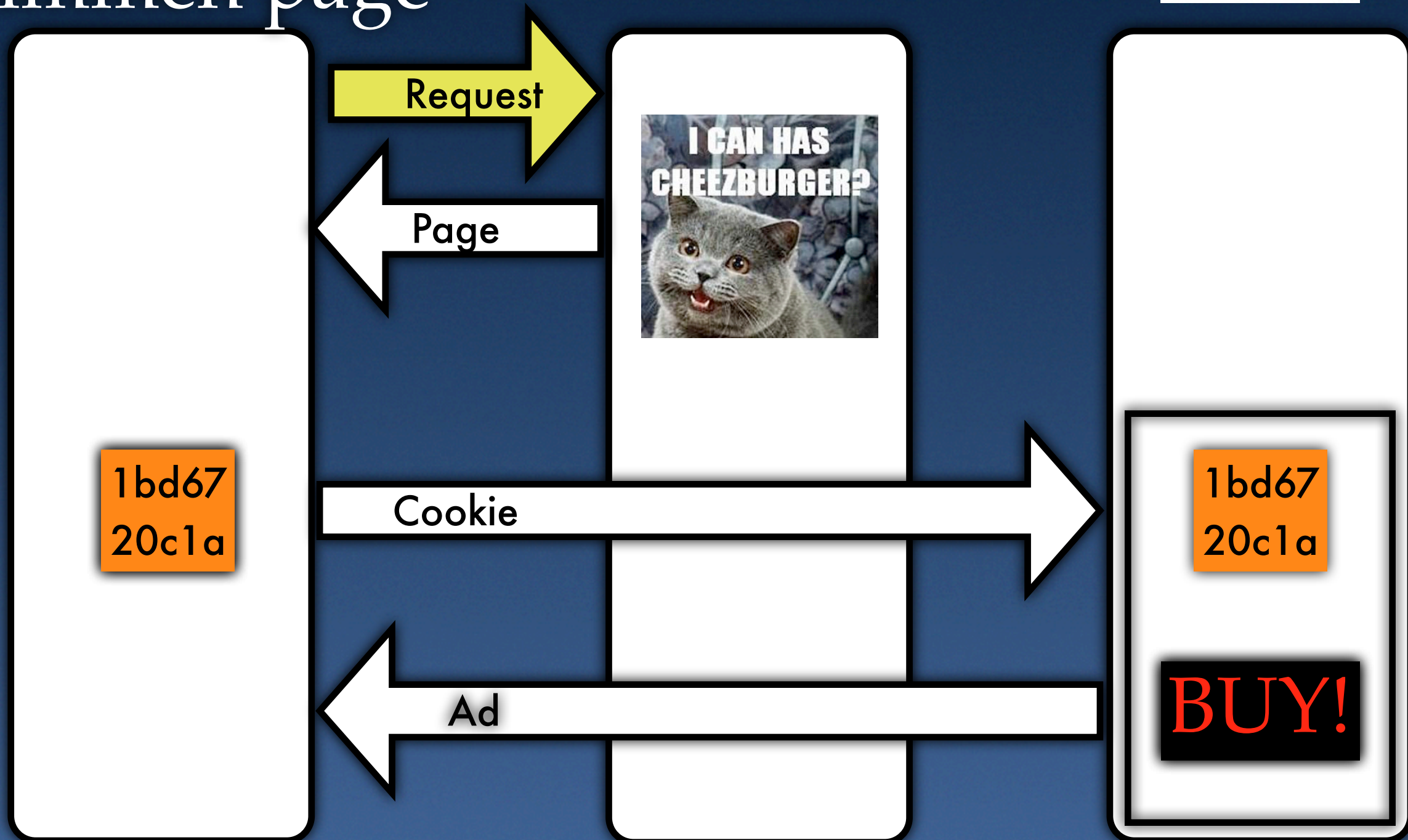
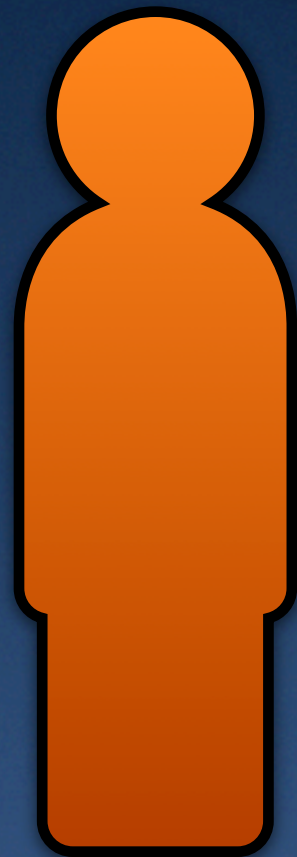
In re DoubleClick

- Why was DoubleClick “authorized” to look at the plaintiffs’ web requests?

(For your reference)



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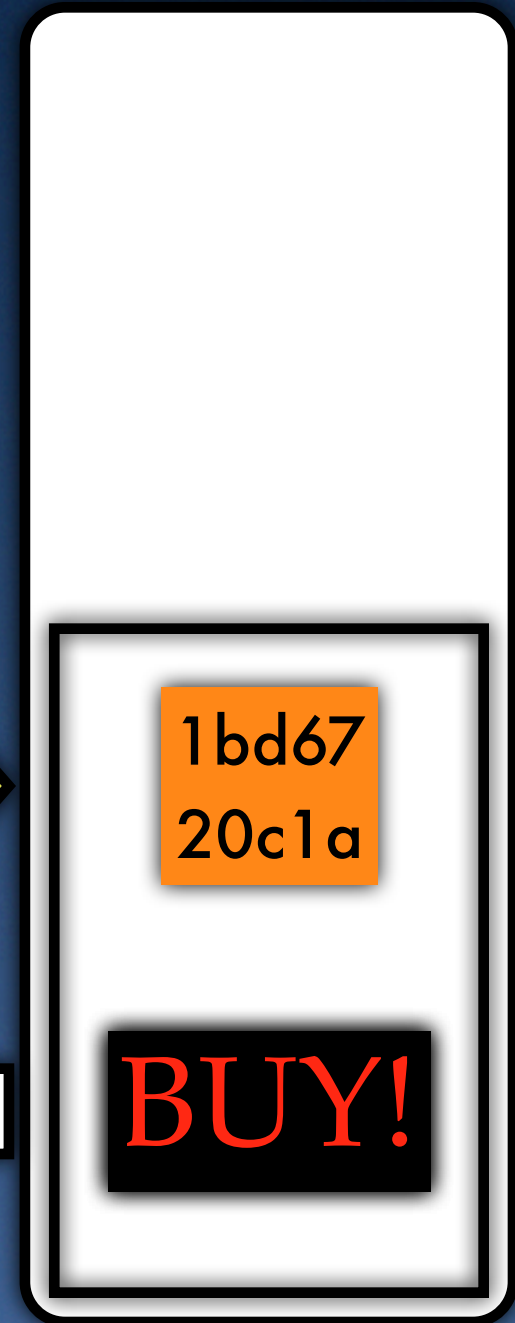
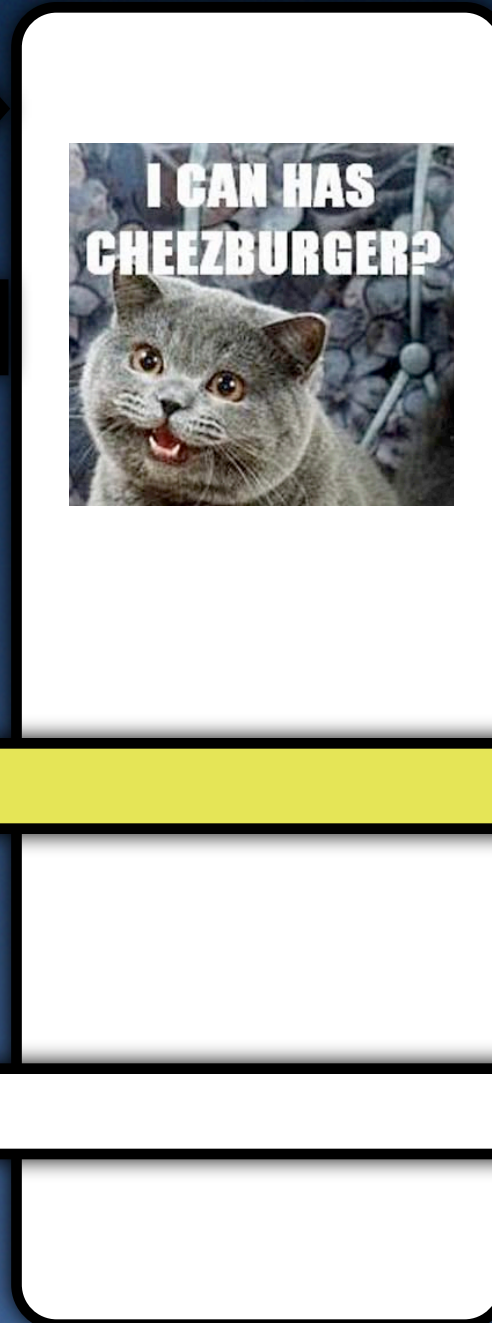
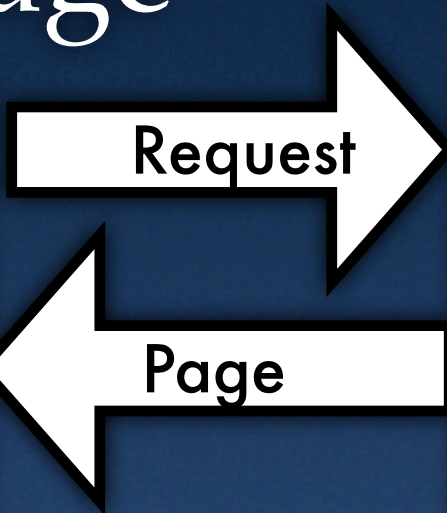
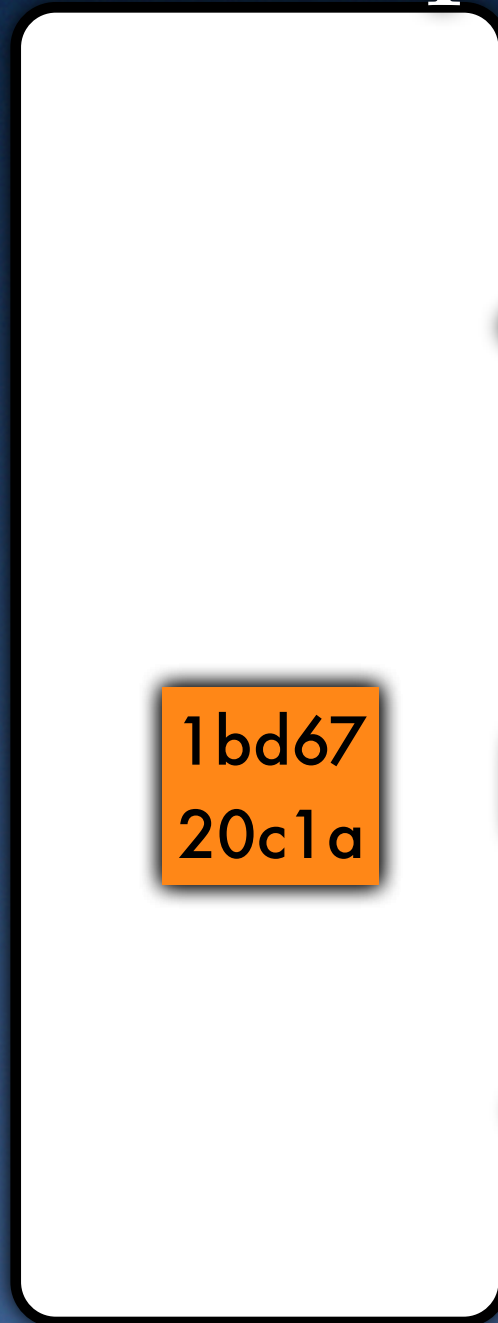
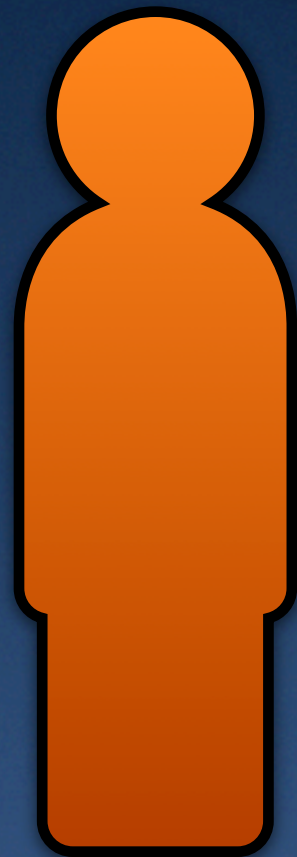


In re DoubleClick

- Why was DoubleClick “authorized” to look at the plaintiffs’ web requests?
 - The web site sent them along
- Why were the cookies communications “of” “or intended for” DoubleClick?

(For your reference)

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In re DoubleClick

- Why was DoubleClick “authorized” to look at the plaintiffs’ web requests?
 - The web site sent them along
- Why were the cookies communications “of” “or intended for” DoubleClick?
 - DoubleClick *itself* created them
- In both cases, users’ browsers are doing exactly what they’re designed to do

In re DoubleClick

- If you think the legal analysis somehow misses the point, you're not alone
 - There's a serious mismatch between ECPA and the privacy problem here
- What *would* be the right form of legal response to this form of surveillance?
 - Does the FTC have it right?
 - Do the Europeans?

Three stories about privacy today

Dr. Flea

- Dr. Robert Lindeman is a medical malpractice defendant
 - He also blogs
 - Under the name Dr. Flea
 - About the trial
 - Without telling his lawyer
- What do you as a lawyer tell clients who want to blog?

Laurie Garrett

- Laurie Garrett is a journalist covering the World Economic Forum in Davos
- She writes a fly-on-the-wall (though hardly scandalous) email to some friends
- Someone forwards it to someone else who forwards it to an email list . . .
- . . . and it ends up on the Internets
- How could this be stopped? Should it?

Say Everything

- “Kids these days, they don’t believe in privacy!”
 - True or false?
 - Good or bad?
 - What happens when they get older?
- A vision of a world without privacy?
- Or just a different kind of privacy?

Next time

Mid-semester review