



hipaa

"Ether Day 1846" by Warren and Lucia Proserpi (2001)



history

A vibrant sunset scene at a beach. The sky is a mix of deep blue, purple, and orange, with scattered clouds. In the foreground, the silhouettes of eight people and one dog are captured in mid-air, jumping joyfully. Their reflections are clearly visible in the wet sand. A red rectangular box is overlaid on the left side of the image, containing the text '3 min.' in white.

3 min.



1996

purposes

1. improve **portability** and **continuity** of coverage

purposes

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2. combat **waste**, **fraud**, and **abuse** in health insurance and healthcare delivery

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3. promote use of **medical savings accounts**

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2. combat **waste**, **fraud**, and **abuse** in health insurance and healthcare delivery
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4. improve **access** to long term care services and coverage

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5. simplify **administration** of health insurance

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5. simplify **administration** of health insurance
6. end world hunger and usher in everlasting peace on earth

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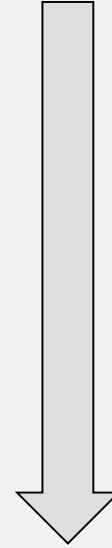
simplify **administration** of health insurance

purposes

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purposes

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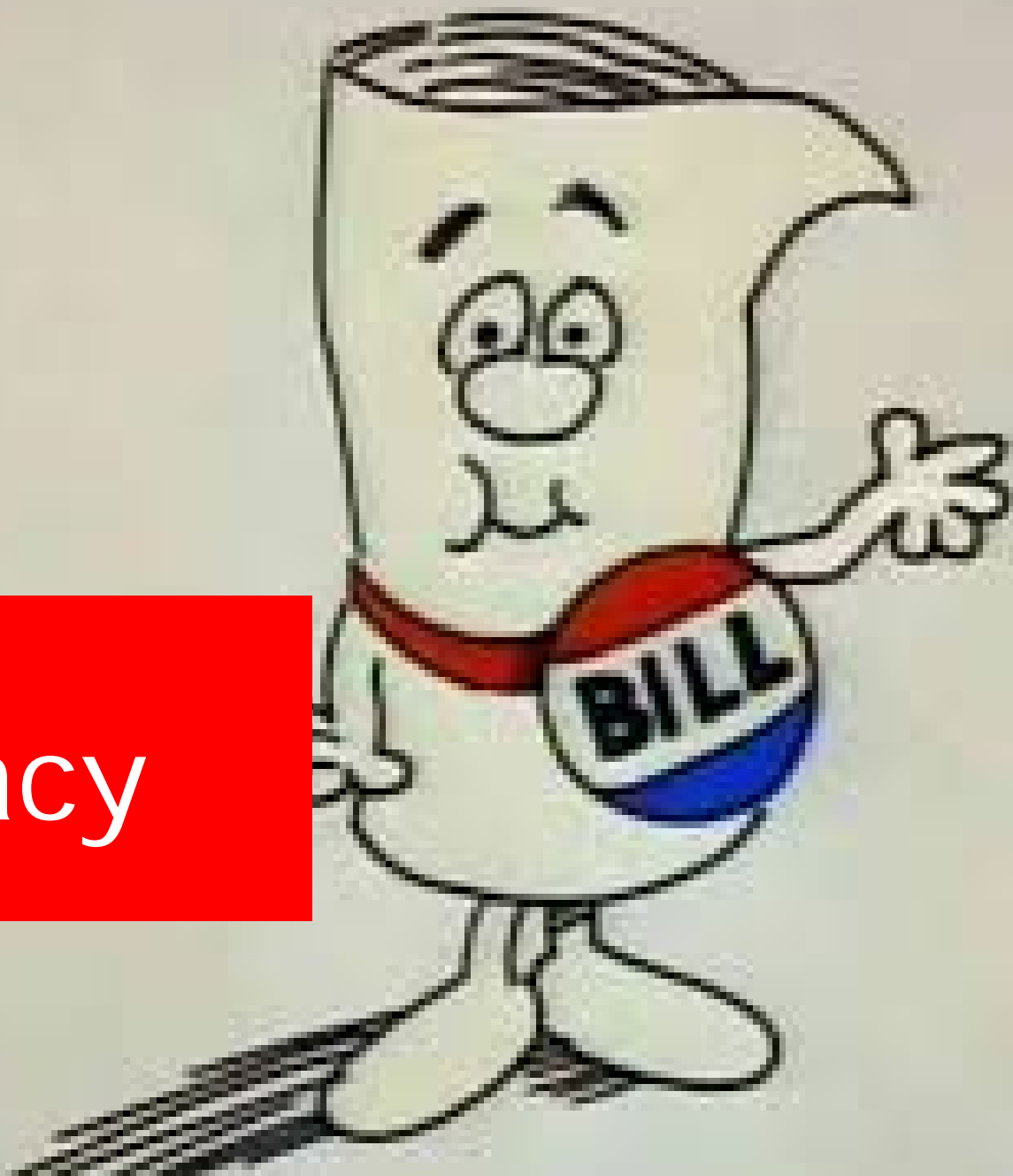
purposes

privacy

A wide-angle, high-angle photograph of a large, ornate legislative chamber, likely the U.S. House of Representatives. The room is filled with people seated in rows of desks. At the front, a raised dais features a central desk with an American flag behind it. The architecture is grand, with high ceilings and decorative elements. A red rectangular box is overlaid on the left side of the image, containing the word "privacy" in white lowercase letters.

privacy

privacy



privacy



afterthought

privacy



A person wearing a blue helmet with a white logo and a black uniform with the number 88 on the back is holding a white ghost costume on a stick. The background is a blurred crowd of people.

privacy

A close-up portrait of a woman with short, styled brown hair. She is smiling broadly, showing her teeth. She is wearing a red top and gold hoop earrings. The background is a plain, light-colored wall.

privacy

A photograph showing a person's hands juggling a large, smooth, reddish-brown rock. The hands are positioned in a way that suggests the rock is being tossed or caught. The background is plain white. A red rectangular box is overlaid on the lower-left portion of the image, containing the word "privacy" in white text.

privacy

Standards for Privacy of Individually Identifiable Health Information

privacy

Standards for Privacy of Individually Identifiable Health
Information

S.P.I.I.H.A.

privacy



Standards for Privacy of Individually Identifiable Health
Information

~~S.P.I.I.H.A.~~

privacy


Standards for Privacy of Individually Identifiable Health Information

PRIVACY RULE

privacy



history

A close-up photograph of a hand holding a pen, positioned as if about to write or having just finished writing the word "privacy" on a light-colored surface. The word is written in a simple, lowercase, sans-serif font. The background is a soft, out-of-focus light color.

The Privacy Rule prohibits covered entities and business associates from using or disclosing protected health information except as HIPAA requires or permits

**privacy
rule**

privacy

required disclosures:

privacy
rule



A man with a shaved head is sitting in a hospital bed, wearing a white hospital gown with a small pattern. He is looking directly at the camera with a neutral expression. The bed has blue pillows and a blue blanket. To the right of the bed, there is a bouquet of purple flowers. The background is a blurred hospital room.

required disclosure:
1. patient requests it

privacy
rule



required disclosure:

2. HHS requests it to
enforce HIPAA

privacy
rule

permissive disclosures:

privacy
rule

S
H
I
T
...

A man with a shaved head is lying in a hospital bed, looking directly at the camera with a neutral expression. He is wearing a white hospital gown with a small dark pattern. The bed has blue pillows and a blue blanket. To the right of the bed, there is a bouquet of purple flowers. The background is a blurred hospital room.

permissive disclosures:

1. to the patient (even absent patient request)

privacy
rule



permissive disclosures:

2. treatment, payment
or healthcare operations

privacy
rule



permissive disclosures:

3. inadvertently
occurring during
permitted or required
disclosure

privacy
rule



permissive disclosures:

4. Written patient authorization

privacy
rule

permissive disclosures:

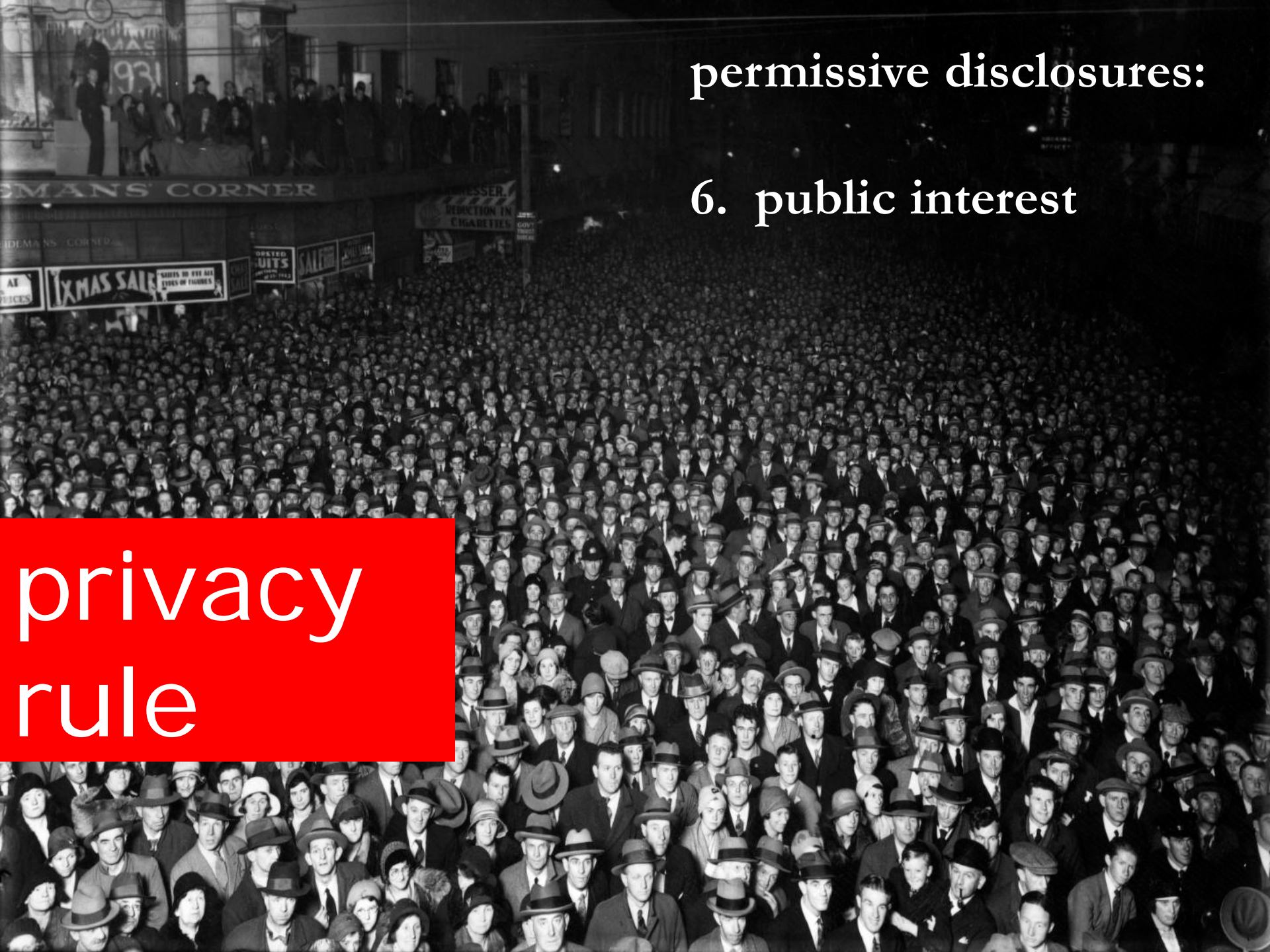
5. agreed disclosures

privacy
rule

permissive disclosures:

6. public interest

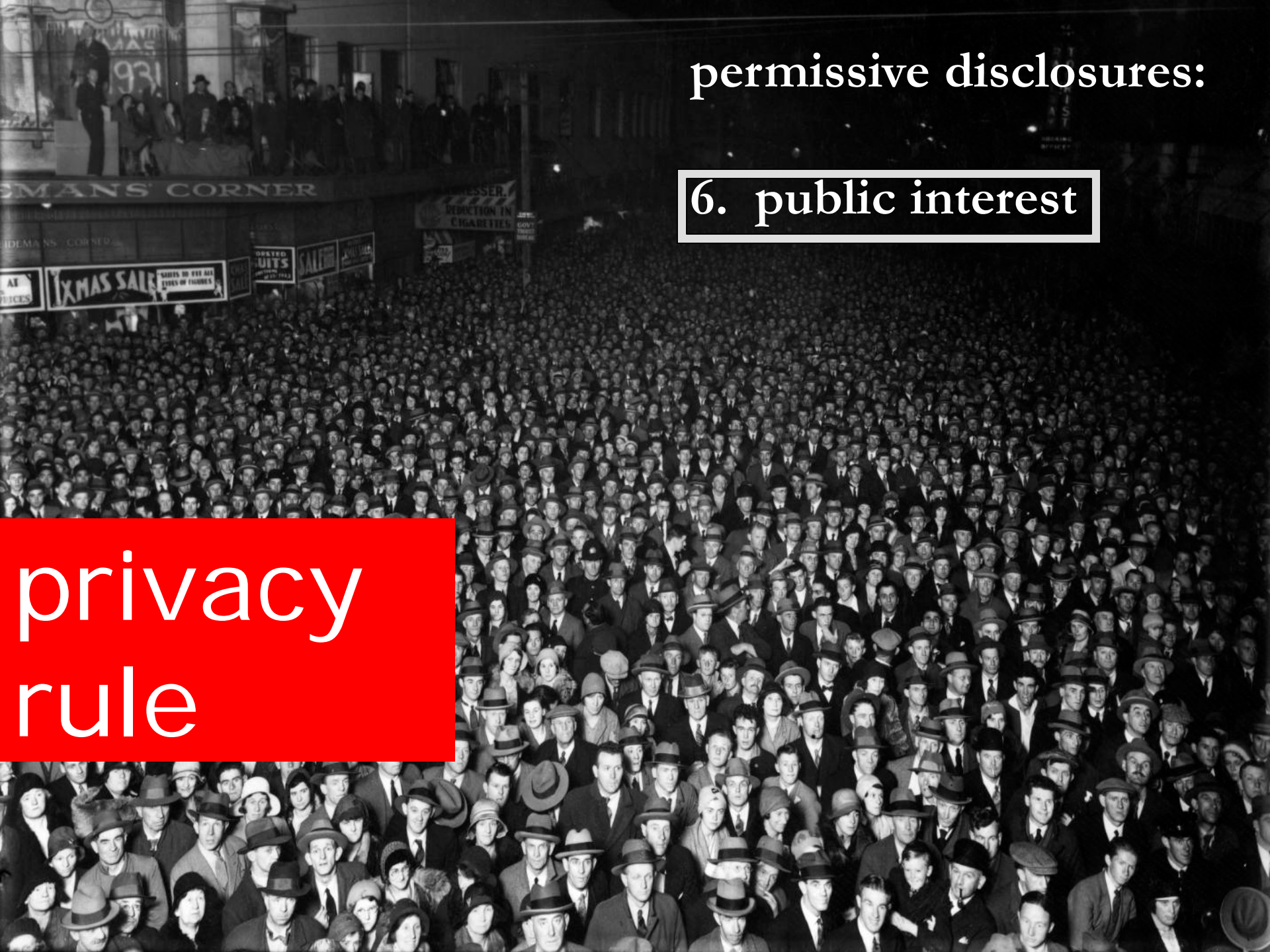
privacy
rule



permissive disclosures:

6. public interest

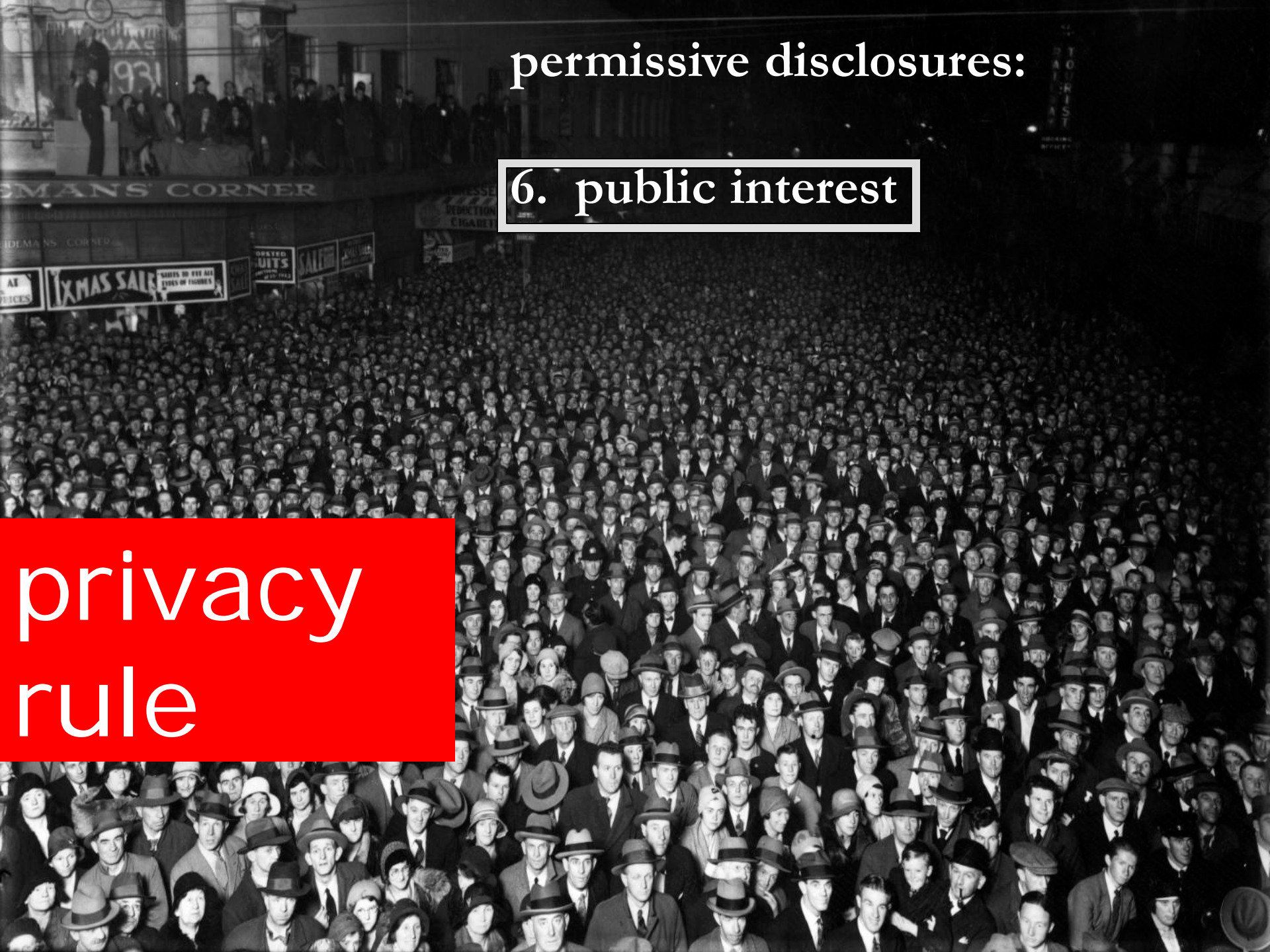
privacy
rule



permissive disclosures:

6. public interest

privacy
rule





permissive disclosures:
6. public interest
a. required by law

privacy
rule



permissive disclosures:

6. public interest

a. required by law

b. public health

privacy
rule



permissive disclosures:

6. public interest

a. required by law

b. public health

c. victims (abuse . . .)

privacy
rule



permissive disclosures:

6. public interest

a. required by law

b. public health

c. victims (abuse . . .)

d. health oversight

privacy
rule

permissive disclosures:

6. public interest
 - a. required by law
 - b. public health
 - c. victims (abuse . . .)
 - d. health oversight
 - e. judicial proceedings

privacy
rule

permissive disclosures:

6. public interest
 - a. required by law
 - b. public health
 - c. victims (abuse . . .)
 - d. health oversight
 - e. judicial proceedings
 - f. about decedents

privacy
rule

permissive disclosures:

6. public interest
 - a. required by law
 - b. public health
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 - f. about decedents
 - g. law enforcement

privacy
rule

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 - h. cadaver donation

privacy
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 - h. cadaver donation
 - i. research

privacy
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 - h. cadaver donation
 - i. research
 - j. avert threats

privacy
rule

permissive disclosures:

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 - i. research
 - j. avert threats
 - k. gov't functions

privacy
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permissive disclosures:

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 - k. gov't functions
 - l. workers' comp

privacy
rule

permissive disclosures:

6. public interest

a. required by law

b. public health

c. victims (abuse . . .)

d. health oversight

e. judicial

proceedings

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k. gov't functions

l. workers' comp

privacy
rule

a. required by law

e. judicial
proceedings

privacy
rule

a. required by law

privacy
rule



a. required by law

privacy
rule

a. required by law

TRCP 176.6(e)

privacy
rule

a. required by law

TRCP 176.6(e)

“... A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court...”

privacy
rule

a. required by law

TRCP 176.6(e)

“... A person **need not comply** with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. . . .”

privacy
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permissive disclosures:

6. public interest

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privacy
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privacy
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proceedings

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privacy
rule

e. judicial
proceedings

privacy
rule

e. judicial
proceedings

privacy
rule

e. judicial
proceedings

privacy
rule

e. judicial proceedings

notice or protective order

privacy
rule

e. judicial proceedings

notice **or** protective order

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance
in writing

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance

in writing

accompanying docs

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance

in writing

accompanying docs

good faith attempt to

provide written notice

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance

in writing

accompanying docs

good faith attempt to

provide written notice

sufficient information

re: litigation to object

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance
in writing

accompanying docs

good faith attempt to
provide written notice

sufficient information

re: litigation to object
and time lapsed without
objection or court

overruled

privacy
rule

e. judicial proceedings

notice:

satisfactory assurance
in writing

accompanying docs

good faith attempt to
provide written notice

sufficient information

re: litigation to object

and **time lapsed without
objection or court**

overruled

privacy
rule

e. judicial proceedings

notice **or** protective order

privacy
rule

e. judicial proceedings

protective order

privacy
rule

e. judicial proceedings

protective order:

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing
parties agreed to a qualifying
protective order and
submitted it to the court

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing
parties agreed to a qualifying
protective order and
submitted it to the court OR
party seeking info requested

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing
parties agreed to a **qualifying**
protective order and
submitted it to the court **OR**
party seeking info requested

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing
parties agreed to a **qualifying**
protective order and
submitted it to the court **OR**
party seeking info requested

use limited to litigation

privacy
rule

e. judicial proceedings

protective order:

satisfactory assurance
in writing with docs showing
parties agreed to a **qualifying**
protective order and
submitted it to the court OR
party seeking info requested

privacy
rule

use limited to litigation and
return or destruction at end

required by law

notice

qualifying protective order

SUBPOENA

privacy
rule

violation

consequences

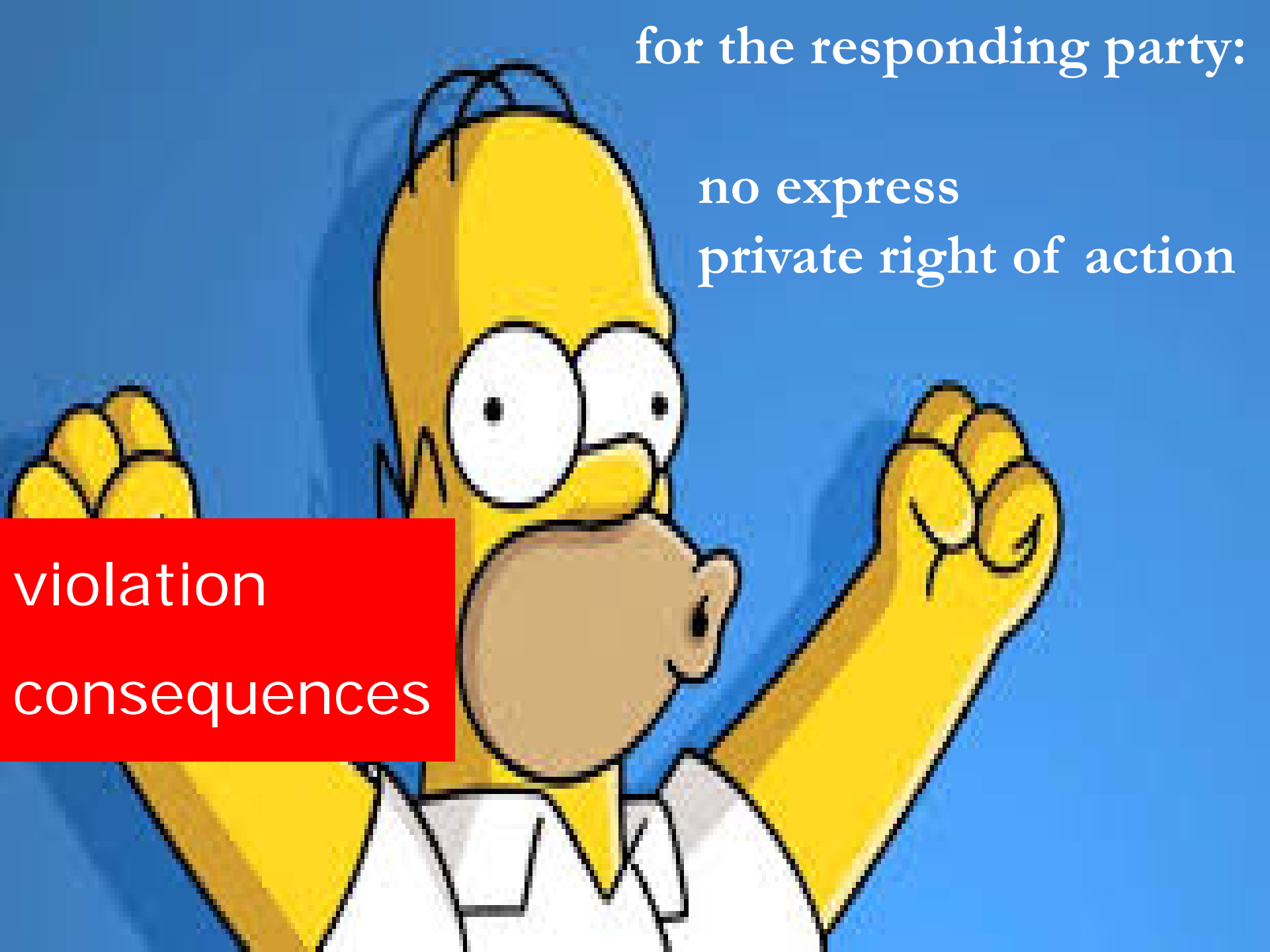
Bad Things



for the responding party:

no express
private right of action

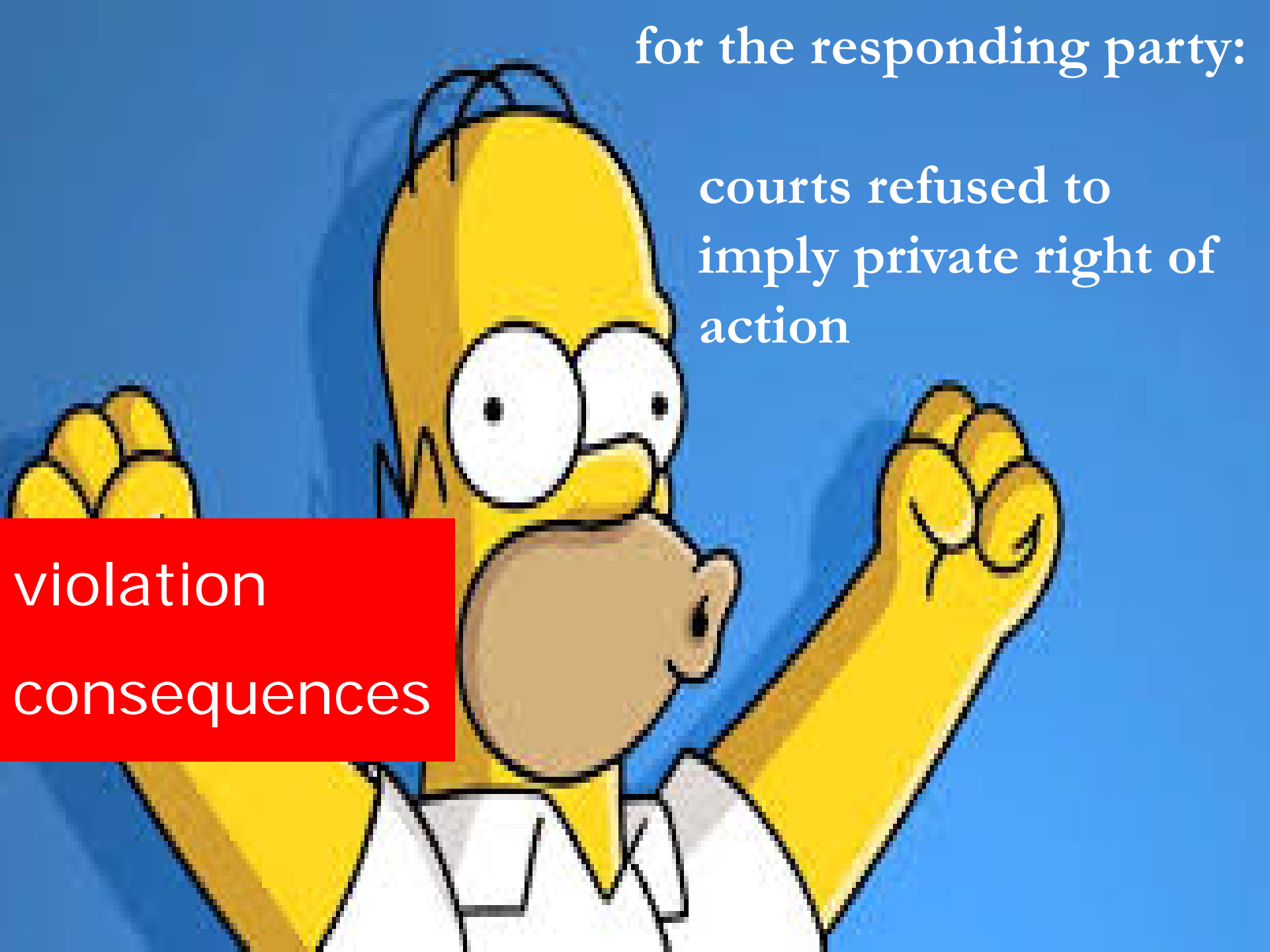
violation
consequences



for the responding party:

courts refused to
imply private right of
action

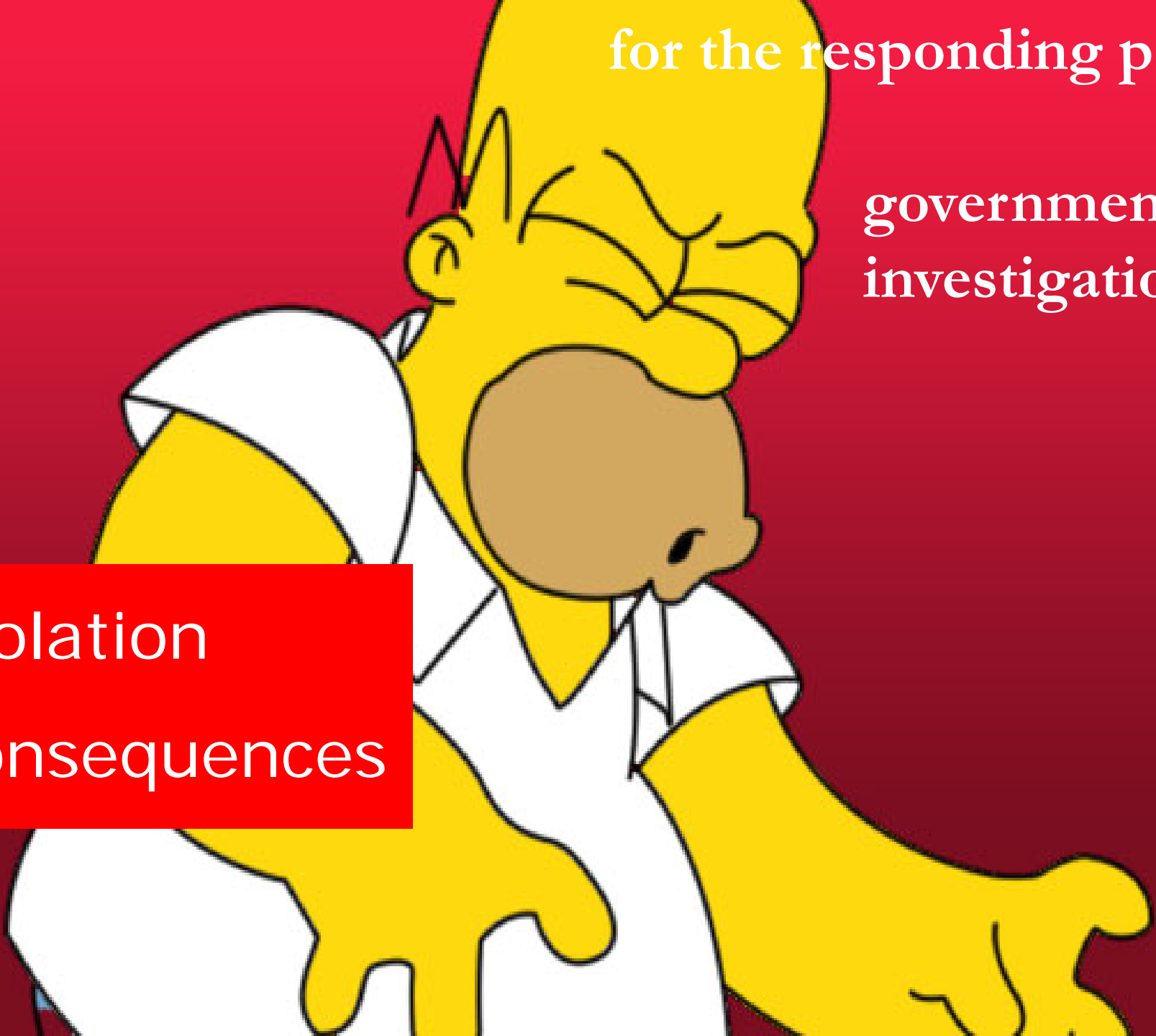
violation
consequences



for the responding party:

government
investigation

violation
consequences





for the responding party:

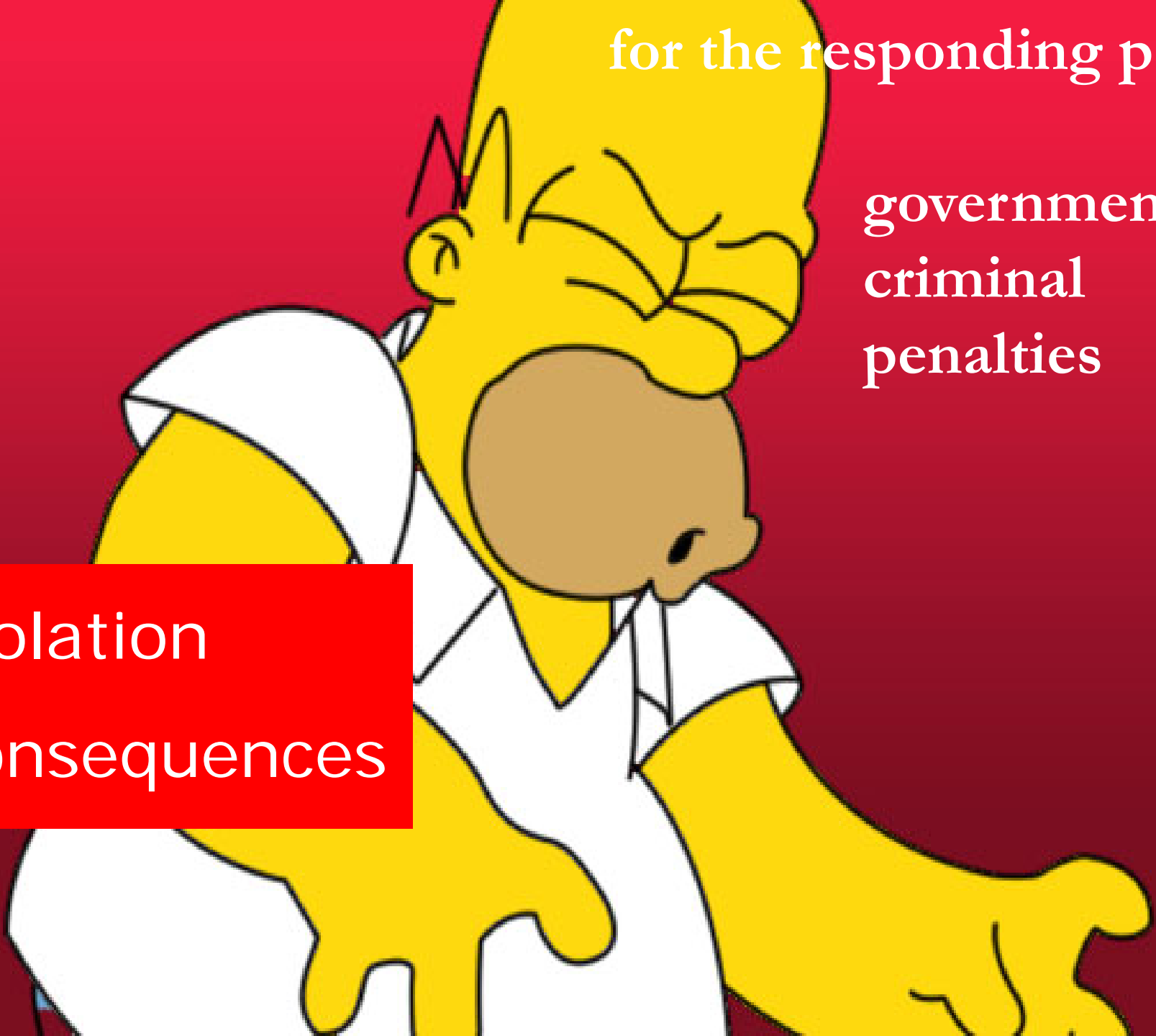
government
civil penalties

violation
consequences

for the responding party:

government
criminal
penalties

violation
consequences





for the responding party:

may set the
standard of
care in torts:

**Byrne v. Avery
Center for
Obstetrics**

violation
consequences



**sucks
to be you**

for the requesting party:

potential
criminal
liability

violation
consequences



A **person** who **knowingly** and in violation of this part –

(1) uses or causes to be used a unique health identifier;

(2) **obtains** individually identifiable health information relating to an individual;
or

(3) **discloses** individually identifiable health information to another person,
shall be punished

A cartoon illustration of Homer Simpson, the yellow-skinned character with a large nose and a white shirt, looking down with a somber expression. The background is a solid red color.

for the requesting party:

DOJ Opinion:

“person” not
limited to
“covered entity”

violation
consequences

A cartoon illustration of Homer Simpson, the character from the animated series 'The Simpsons'. He is depicted from the chest up, wearing his signature white short-sleeved shirt and yellow tie. He has his characteristic large, yellow, dome-shaped hair. His eyes are closed, and he has a slightly pensive or weary expression. The background is a solid red color.

for the requesting party:

DOJ Opinion:

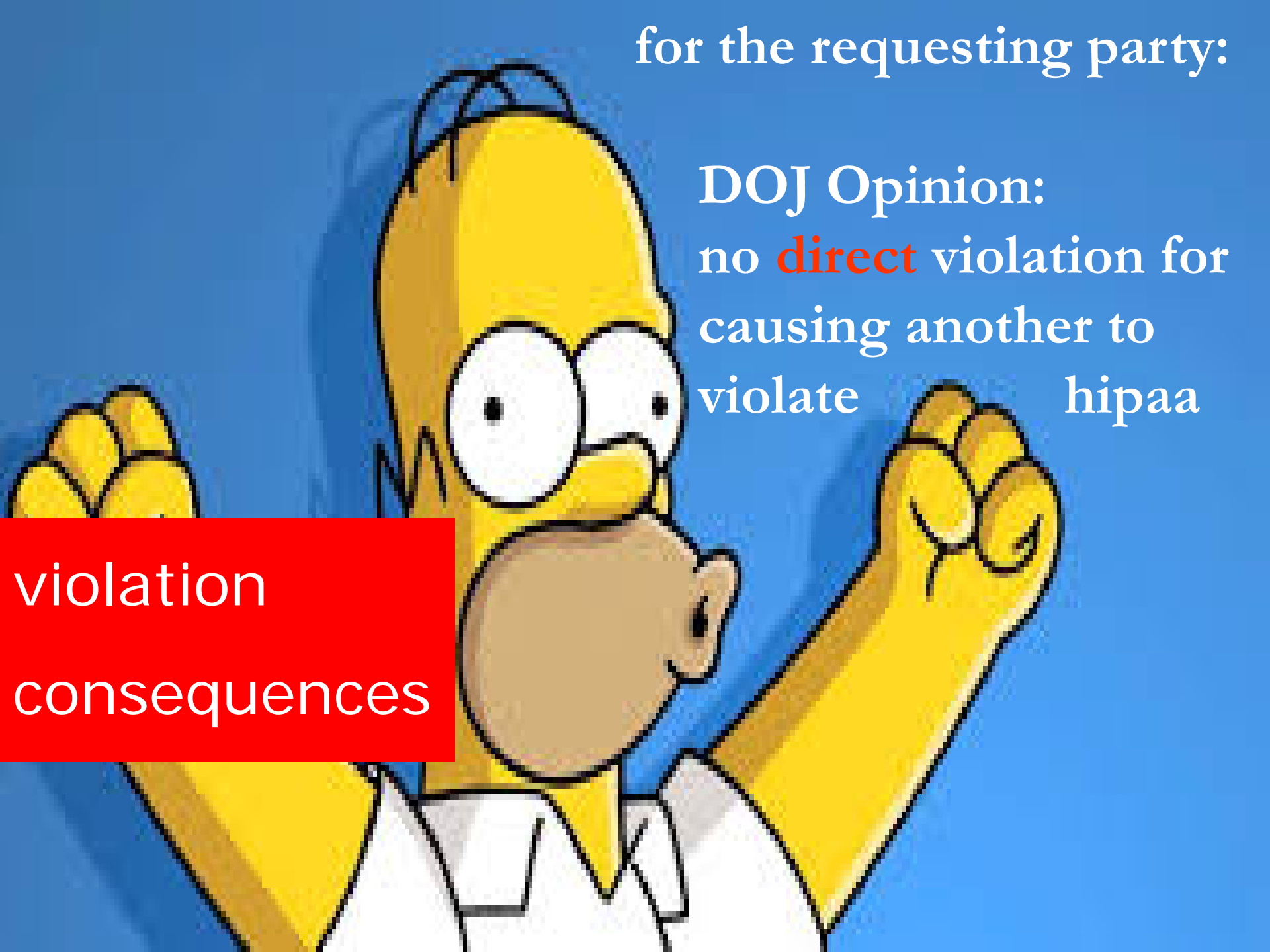
“knowingly”
means person
knew facts – not
that conduct
violated the law

violation
consequences

for the requesting party:

DOJ Opinion:
no **direct** violation for
causing another to
violate hipaa

violation
consequences





for the requesting party:

DOJ Opinion:
aiding and
abetting liability

“aids, abets,
counsels,
commands,
induces, . . .
crime”

violation
consequences

A cartoon illustration of Homer Simpson, the yellow-skinned character from the animated series 'The Simpsons'. He is shown from the chest up, wearing his signature white short-sleeved shirt and yellow tie. He has his eyes closed and a slightly pained or frustrated expression, with his hands raised in front of him. The background is a solid red color.

for the requesting party:

sanctions —
civil procedure
rules for
subpoenas

violation
consequences



for the requesting party:

retaliatory
conduct —

BNSF v. White

violation
consequences



for the requesting party:

retaliatory
conduct —

Noerr-
Pennington
Doctrine

violation
consequences



for the issuing lawyer:

lawyer
immunity
may not apply
to criminal
liability

violation
consequences



for the issuing lawyer:

lawyer
immunity
may not apply
to civil liability
for issuing a
subpoena —
Rodrigues v.
City of New
York

violation
consequences



for the issuing lawyer:

lawyer

immunity

may not apply
to civil liability

for hipaa

subpoena —

Fuhler v.

Gateway Medical

violation

consequences



for the issuing lawyer:

lawyer
immunity
may not protect
client from
exposure

violation
consequences



use of medical
in litigation:

ADA —
civil exposure
for filing public
pleadings that
disclose medical

violation
consequences

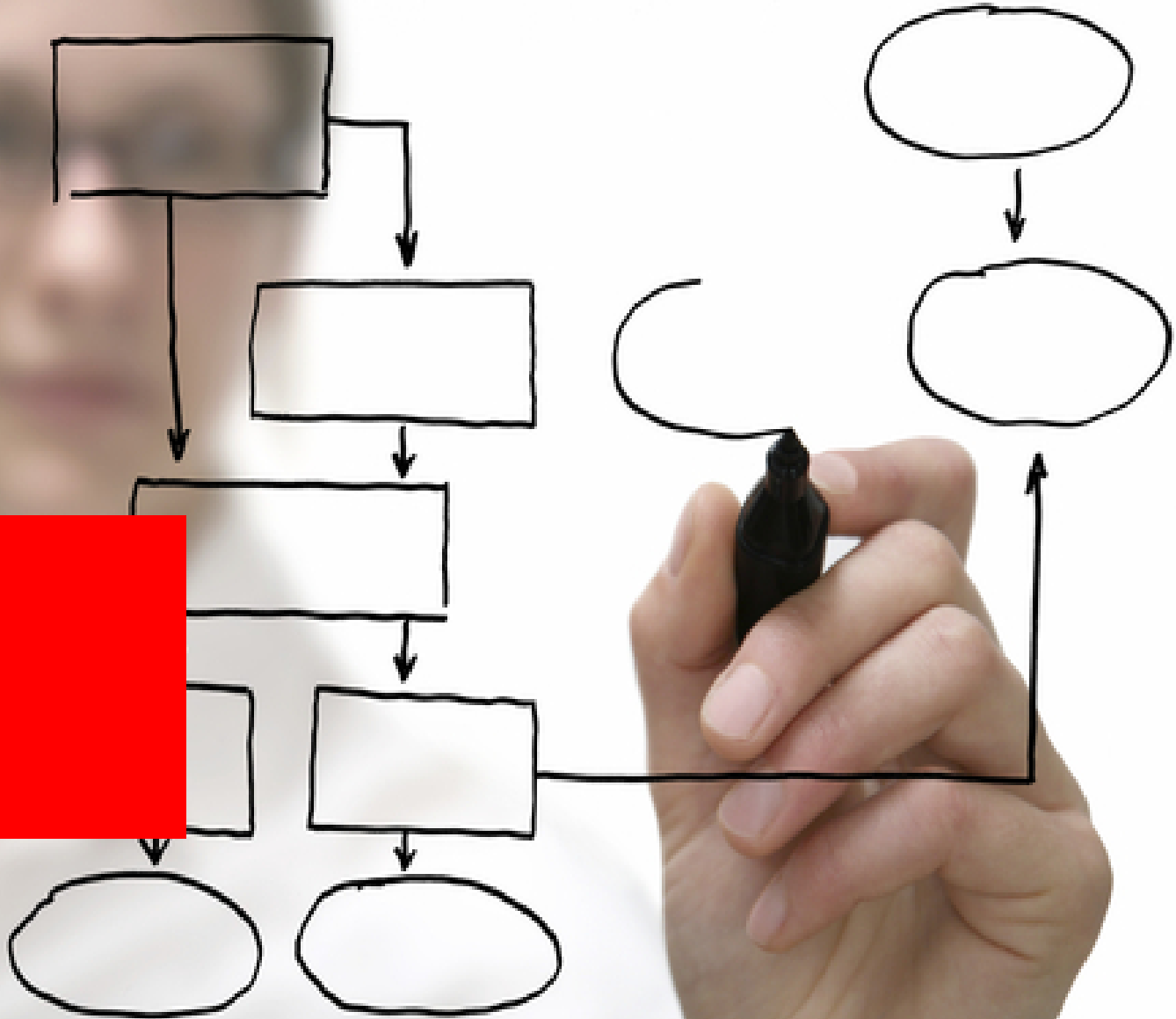
A cartoon illustration of a doctor with a large yellow head, wearing a white lab coat and a stethoscope. The doctor is looking down at a patient's arm, which is also yellow. The background is a solid red color.

use of medical
in litigation:

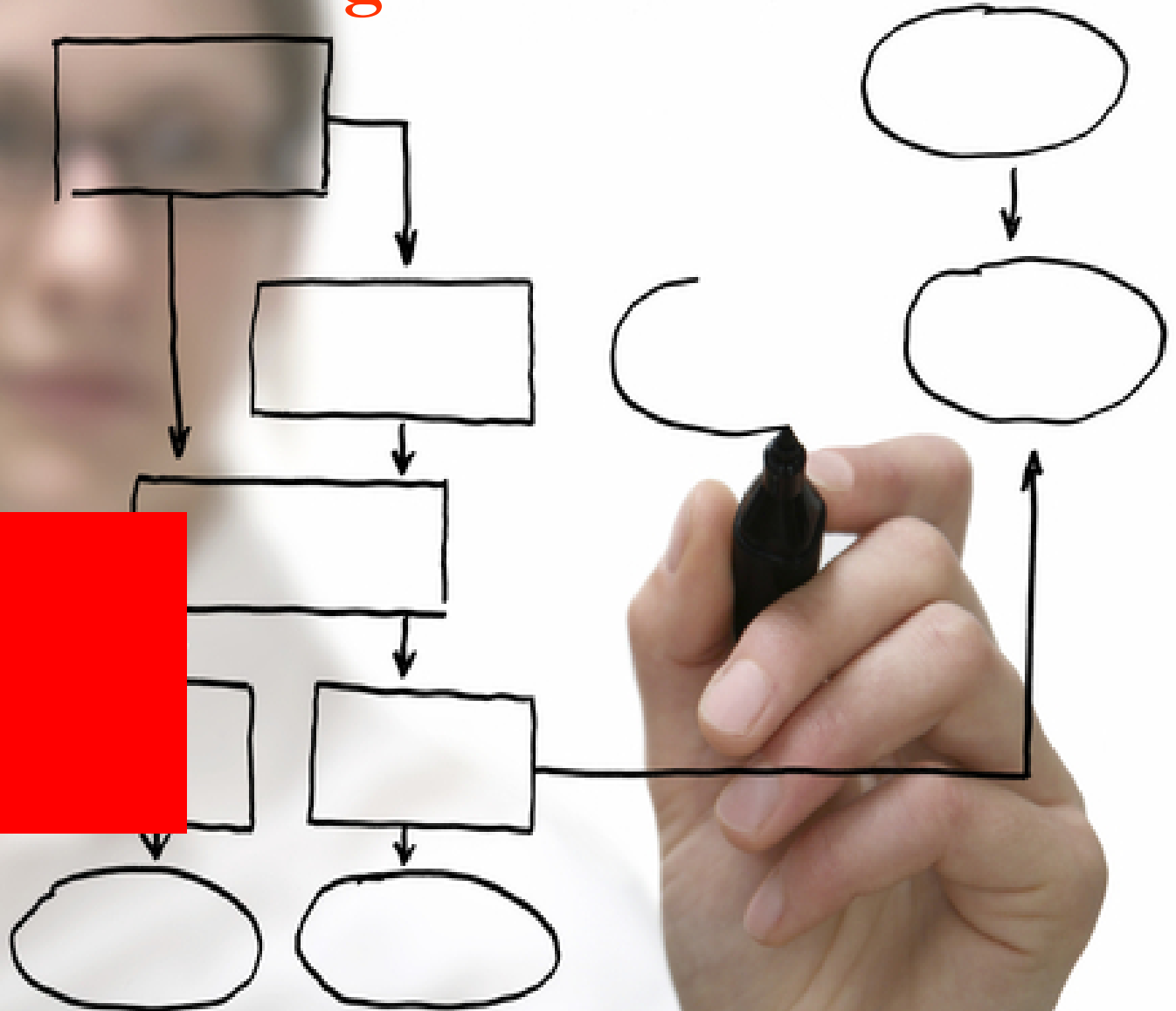
ADA —
civil exposure
for filing public
pleadings that
disclose medical

violation
consequences

good
practices:
plan



for plaintiff's counsel:
gather medical



good
practices:
plan

for plaintiff's counsel:
gather medical
write doctors



good
practices:
plan

for defense counsel:
know hipaa rules
give assurances



good
practices:
plan

for in-house counsel:
have a protocol for
outside counsel
on subpoenas
for medical and
use



good
practices:
plan

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**thank
you!**