SWIFT, PNR, and more

European cooperation with
USA dataveillance in the "war on terror":

The state of play in the European Parliament

SWIFT = Society for Worldwide Interbank Financial Transfers

Belgian company with branch office in USA; handles electronic funds transfers worldwide

Extra-judicial US Dept. of Treasury access to SWIFT data through "Terrorist Finance Tracking Program" (TFTP) and SWIFT office in USA

European objections to US access to SWIFT data

• Secrecy: US access to SWIFT data was revealed after the fact by US newspapers in 2006 (act first, ask forgiveness later, rather than ask permission before acting)

• Intrusion into EU internal affairs (records kept by EU company about EU citizens transferring money between banks within the EU)

SWIFT/TFTP state of play

1. SWIFT/TFTP "agreement" between DHS and EU rejected by EP in Feb. 2010 (376-198 vote)

2. Agreement re-negotiated by EC

3. Revised proposal for agreement published last week (text at Statewatch.org and JanAlbrecht.eu; analysis at EDRI.org)

4. EP vote on new agreement maybe in July 2010?

5. In absence of any agreement, US must now go through normal judicial/police channels for access to SWIFT data.

PNR = Passenger Name Record (airline, etc., reservations)

"What's in a PNR?"
http://hasbrouck.org/articles/PNR.html

Most airlines outsource hosting of PNR databased to 3rd-party Computerized Reservation Systems (CRS's)

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*** ELECTRONIC TICKET ***
F 1.1HASBROUCK/EDWARDMR
WW1ACWW 29AUG PMIME5
  1 AC 761 A  SA   9SEP  YULSFO HK1    0830 1130 CABY
FONE-
1.WW1-H 1 415 824-8562
2.WW1-P 1 415 824-0214
3.WW1-A 1130 TREAT AVE./**/SAN FRANCISCO CA/94110 US
4.WW1-A AIRCANADA//HASBROUCK.ORG/MEMBER EMAIL
TKT-
1.1 K29AUGWW1WW 0142138066453
AP FAX-
1.1 SSRFQTVYYPN1 /UA00168716753
RMKS-
1.1  C/H IS EDWARD HASBROUCK/CA USER ENTERED CREDIT CARD/USD 248
.78/ALL PSGRWEB BOOKING/EMAIL TO C/H
2. MOP: CHARGE MY CREDIT CARD
3. PASSENGER REQUESTED I/R DELIVERY BY EMAIL TO AIRCANADA//HASBR
OUCK.ORG
4. TIDGERGJK1J4
5. BKIP 172.24.96.31 29AUG06 17:22

---HISTORY---
RCVD-INTERNET PNR GUEST
WW1 AC WW 1723Z/29AUG
WW1 GS WW IOIBM01 1723Z/29AUG
NO FLOWN SEGS
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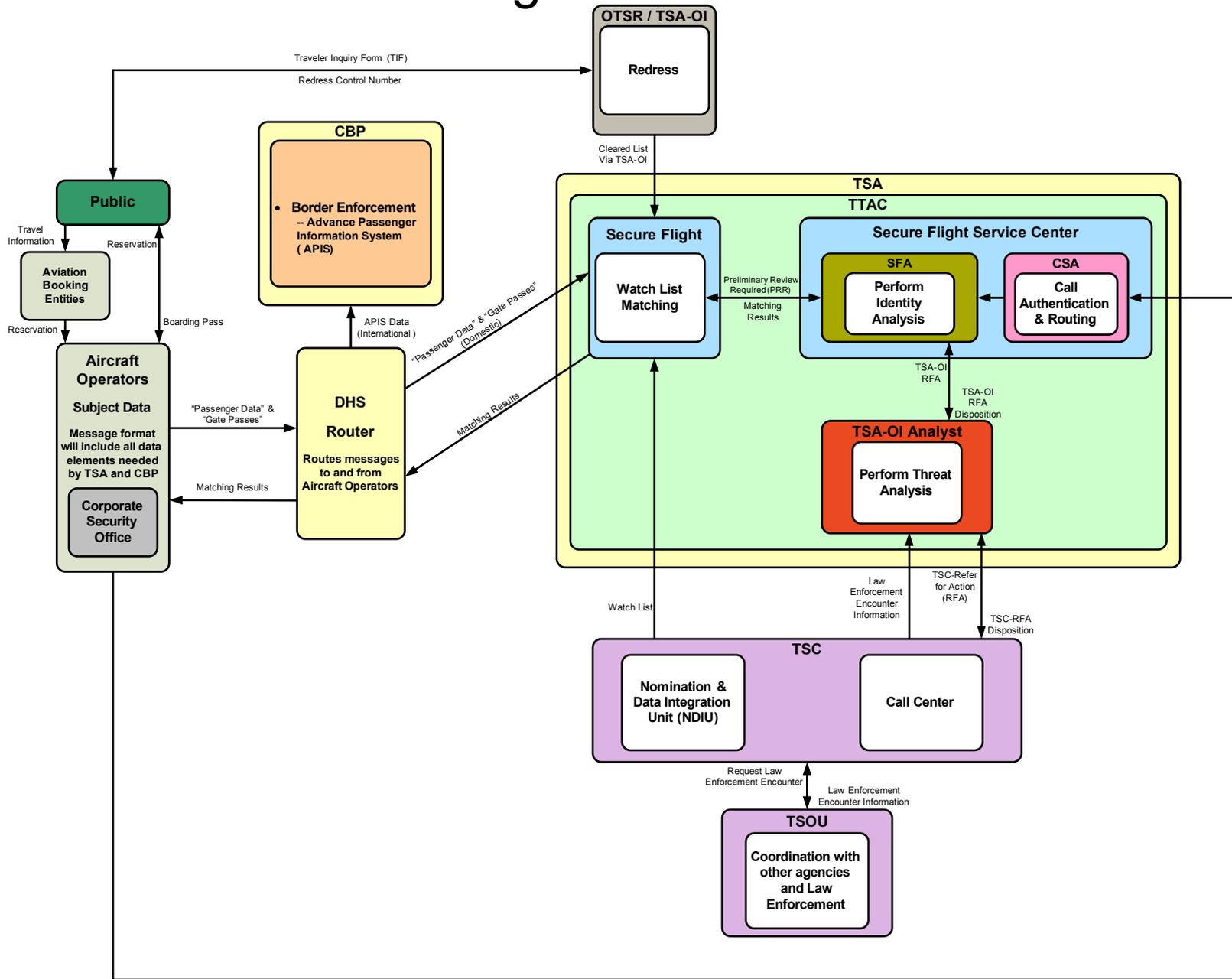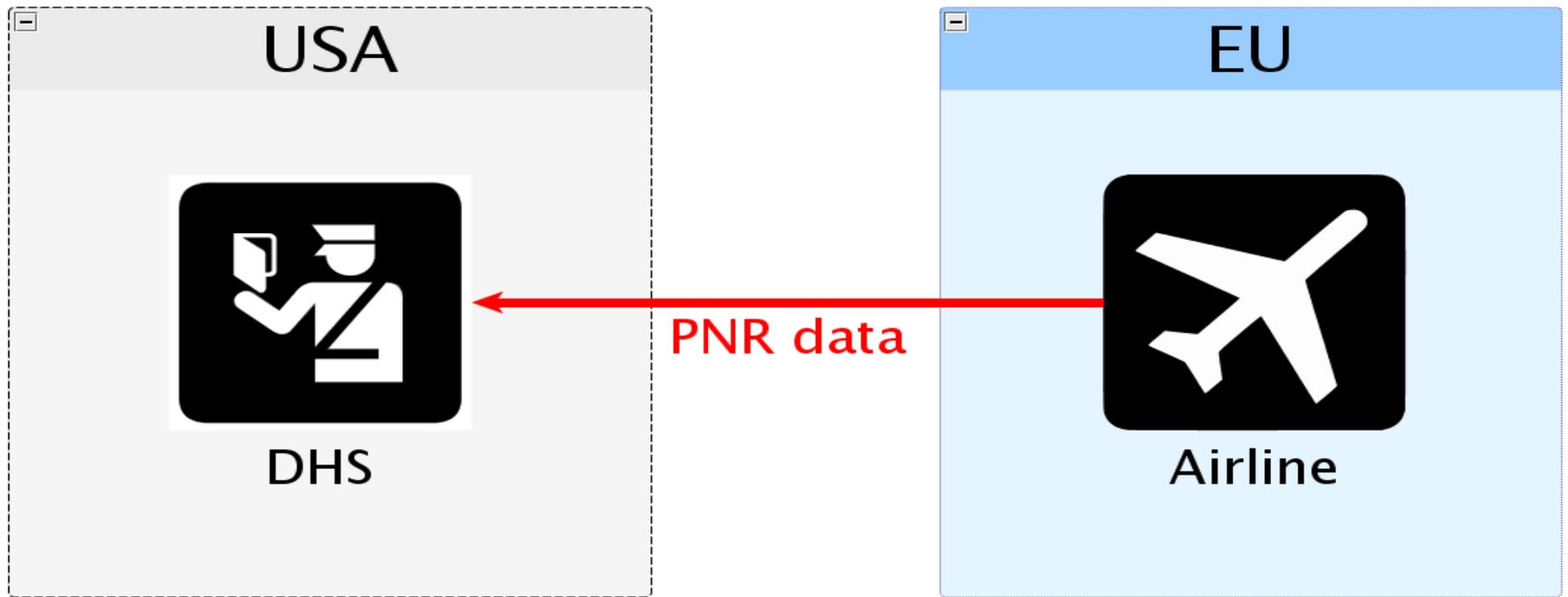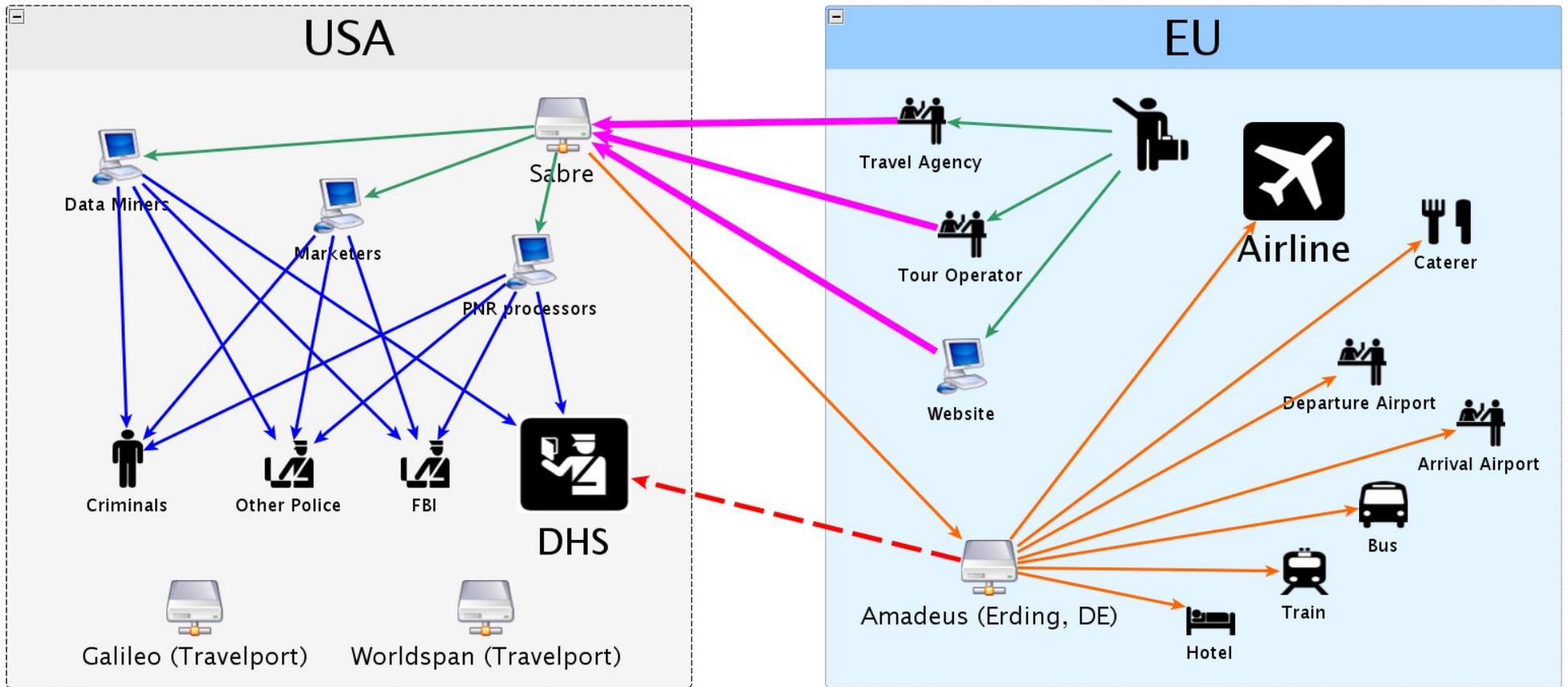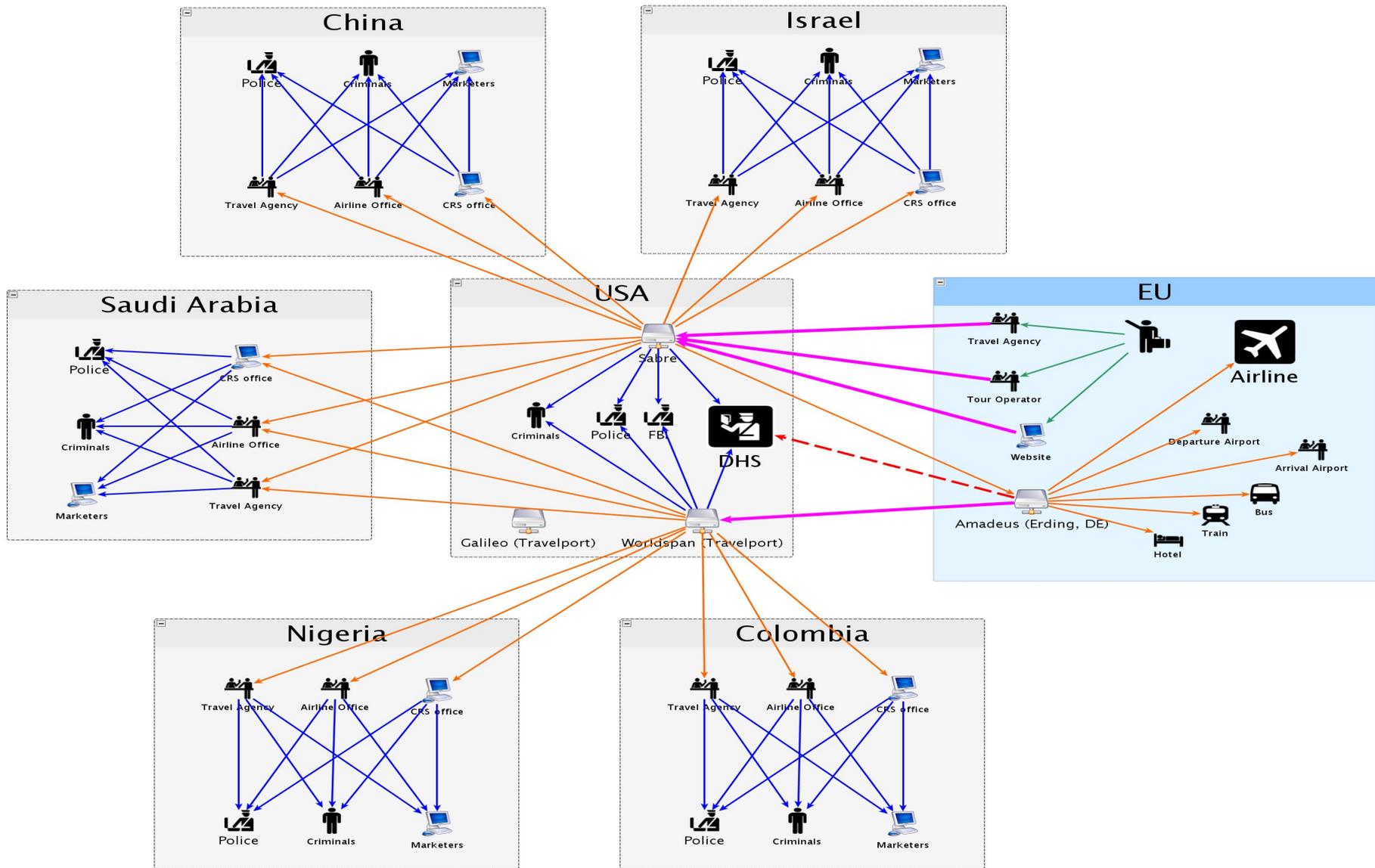
How does DHS use PNR data?

1. Airlines give DHS root access to CRS's to pull PNR data. (CRS's don't keep access logs.)

2. DHS imports PNR data into CBP "Automated Targeting System" (ATS) database of lifetime travel history records.

3. ATS records are used as part of the basis for making real-time fly/no-fly decisions.

Secure Flight Business Model

OTSR / TSA-OI

Redress

Traveler Inquiry Form (TIF)

Redress Control Number

Cleared List Via TSA-OI

CBP

- **Border Enforcement -- Advance Passenger Information System (APIS)**

Public

Travel Information

Reservation

Aviation Booking Entities

Reservation

Boarding Pass

Aircraft Operators

Subject Data

Message format will include all data elements needed by TSA and CBP

Corporate Security Office

APIS Data (International)

"Passenger Data" & "Gate Passes"

Matching Results

DHS

Router

Routes messages to and from Aircraft Operators

"Passenger Data" & "Gate Passes" (Domestic)

Matching Results

TSA

TTAC

Secure Flight

Watch List Matching

Secure Flight Service Center

SFA

Perform Identity Analysis

CSA

Call Authentication & Routing

Preliminary Review Required (PRR)

Matching Results

TSA-OI RFA

TSA-OI RFA Disposition

TSA-OI Analyst

Perform Threat Analysis

Watch List

Law Enforcement Encounter Information

TSC-Refer for Action (RFA)

TSC-RFA Disposition

TSC

Nomination & Data Integration Unit (NDIU)

Call Center

Request Law Enforcement Encounter

Law Enforcement Encounter Information

TSOU

Coordination with other agencies and Law Enforcement

USA

DHS

EU

Airline

PNR data

USA

Data Miners
Sabre
Marketers
PNR processors
Criminals
Other Police
FBI
DHS
Galileo (Travelport)
Worldspan (Travelport)

EU

Travel Agency
Tour Operator
Website
Airline
Caterer
Departure Airport
Arrival Airport
Bus
Train
Hotel
Amadeus (Erding, DE)

Where has *your* PNR data gone?

A short, oversimplified history of European policy on PNR data:

1. US demands extra-judicial access to PNR data

2. DHS (Stewart Baker) "agreement" with EU (1st agreement annulled on technical grounds; followed by 2nd agreement in 2007)

3. After Lisbon Treaty took effect in Dec. 2009, agreement no longer valid in EU without EP approval, but...

4. In absence of explicit rejection by EP or legal challenge in EU courts, DHS access has been allowed to continue. First lawsuit against US PNR access filed March 2010, pending in Belgian Constitutional Court.

5. Proposal for EP approval of previous agreement is pending.

EP debate on PNR data
(to be continued)

EP resolution adopted April 2010:

• Expresses opinion of EP. Not a binding decision.

• Postpones yes or no decision on current proposal.

• EP thinks current proposal is unacceptable.

• Sets <u>criteria</u> for approval of a revised proposal.

• EC now renegotiating with DHS.

• EP delegation to Washington on PNR, June 29-July 2

• Revised agreement likely to be submitted to the EP for consideration in September 2010.

EU meta-debate on SWIFT, PNR, and more

• Proposal for an EU-US framework agreement on "data protection in the context of police and judicial cooperation" (which would apply to financial, travel, etc. data)

• MEP Jan Albrecht (German Green, member of LIBE Committee, JanAlbrecht.eu) appointed "rapporteur" in EP for this dossier

Timeline:

- September 2010: Negotiations begin between Council/EC and USA
- September 2010: EP LIBE Committee hearing w/ expert witnesses
- September 2010: EP LIBE Committee delegation trip to Washington
- Later in 2010, or 2011: Negotiations conclude, proposed agreement goes to EP and Council for ratification

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http://www.hasbrouck.org

The Identity Project:
http://www.PapersPlease.org