WHY AREN'T TECH COMPANIES DEMANDING THE COMMON COMMERCIAL SERVICE AGREEMENT OLC?

As noted, Ron Wyden used Eric Holder's imminent departure as an opportunity to point to some secrets that he believes should be told. One of those pertains to what the 2003 OLC opinion on common commercial service agreements refers to.

> Second, I have written to you on multiple occasions about a particular legal opinion from the Justice Department's Office of Legal Counsel (OLC) interpreting common commercial service agreements. As I have said, I believe that opinion is inconsistent with the public's understanding of the law, and should be withdrawn. I also believe that this opinion should be declassified and released to the public, so that anyone who is party to one of these agreements can consider whether their agreement should be revised or modified.
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> In her December 2013 confirmation hearing to be General Counsel of the CIA, the deputy head of the OLC stated that she would not rely on this opinion today. While I appreciate her restraint, I believe the wisest course of action would be for you to withdraw and declassify this opinion, so that other government officials are not tempted to rely on it in the future. I urge you to take these actions as soon as practicable, since I believe it will be difficult for Congress to have a fully informed debate on cybersecurity legislation if it does not understand

> how these agreements have been interpreted by the Executive Branch.

As I laid out in October 2013, Wyden has been trying to liberate this memo since before summer 2012, and he has (as he now is doing) renewed his request every time cybersecurity bills come up (and then some).

> Some time last summer, Ron Wyden **wrote** Attorney General Holder, asking him (for the second time) to declassify and revoke an OLC opinion pertaining to common commercial service agreements. He said at the time the opinion "ha[d] direct relevance to ongoing congressional debates regarding cybersecurity legislation."
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> That request would presumably have been made after President Obama's April 25, 2012 **veto threat** of CISPA, but at a time when several proposed Cybersecurity bills, with different information sharing structures, were floating around Congress.
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> Wyden **asked for** the declassification and withdrawal of the memo again this January as part of his laundry list of requests in advance of John Brennan's confirmation. Then, after having been silent about this request for 8 months (at least in public), Wyden **asked again**on September 26.

Since then, we've learned that the memo dates to 2003, and was a matter of first impression when it was written.

I've been writing about this memo since 2013, but I don't have the legal support to FOIA something DOJ is obviously pretty embarrassed about.

But why hasn't big tech? Why haven't other companies that sign common commercial service

agreements? Why hasn’t some lawyered up company – or lawyered up trade group – sued for this thing, as it clearly may affect their businesses?

Or would they just rather prefer not to know?