

Ronald L. Chichester, J.D., CISA

General Data Protection Regulation

Keeping yourself, your
customers, and your data safe
in a monitized-data era

New York City
October 10, 2018

Disclaimer

I am a lawyer

But I am not *your* lawyer

So this is **not** legal advice

So this is **not** legal advice

Because if it was, it would be followed by a bill

BTW, I'm also a data scientist

(Yes, some of us do both)

Where I'm Coming From...

I started out as an aerospace engineer

I started out as an aerospace engineer



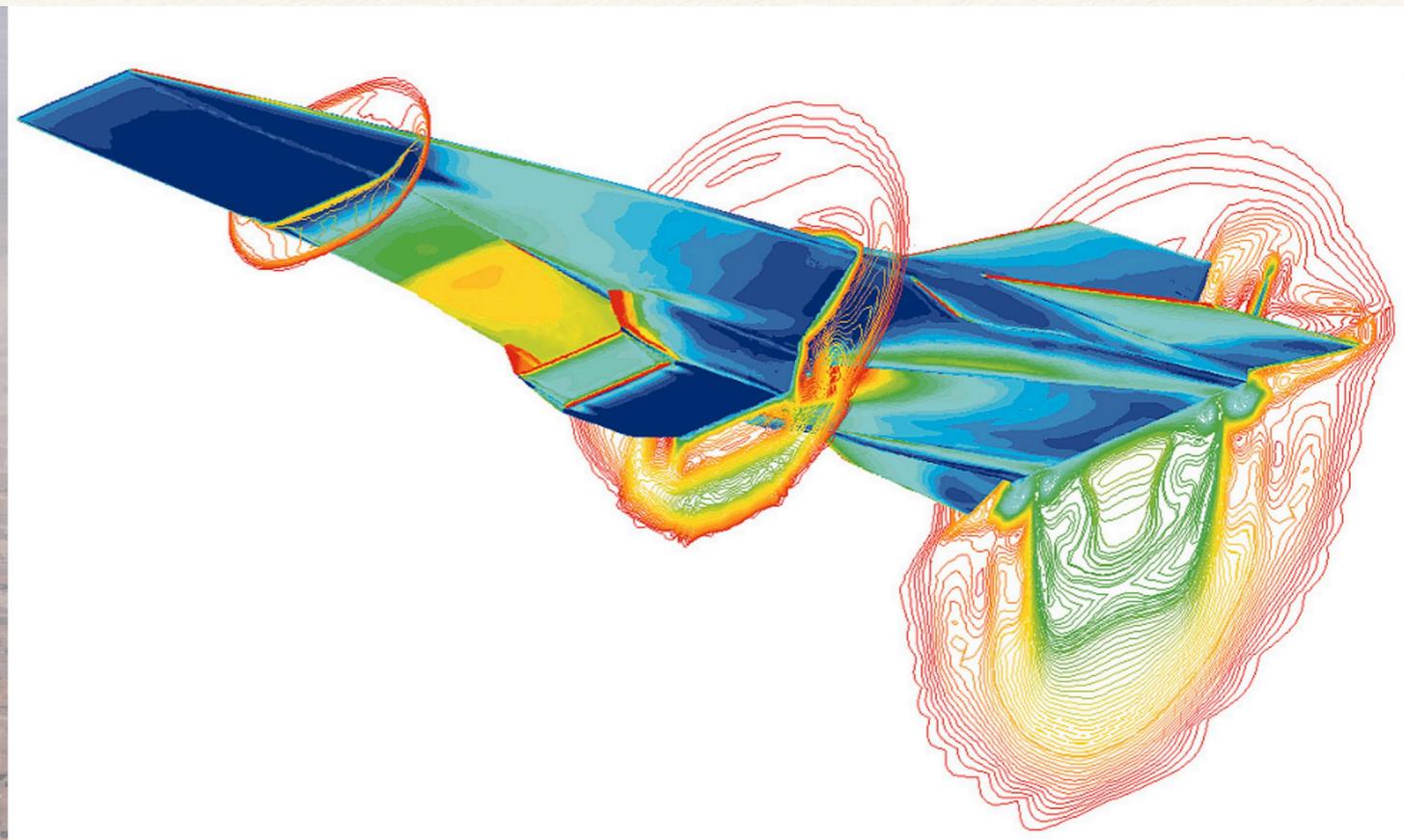
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Where I started in Data Science

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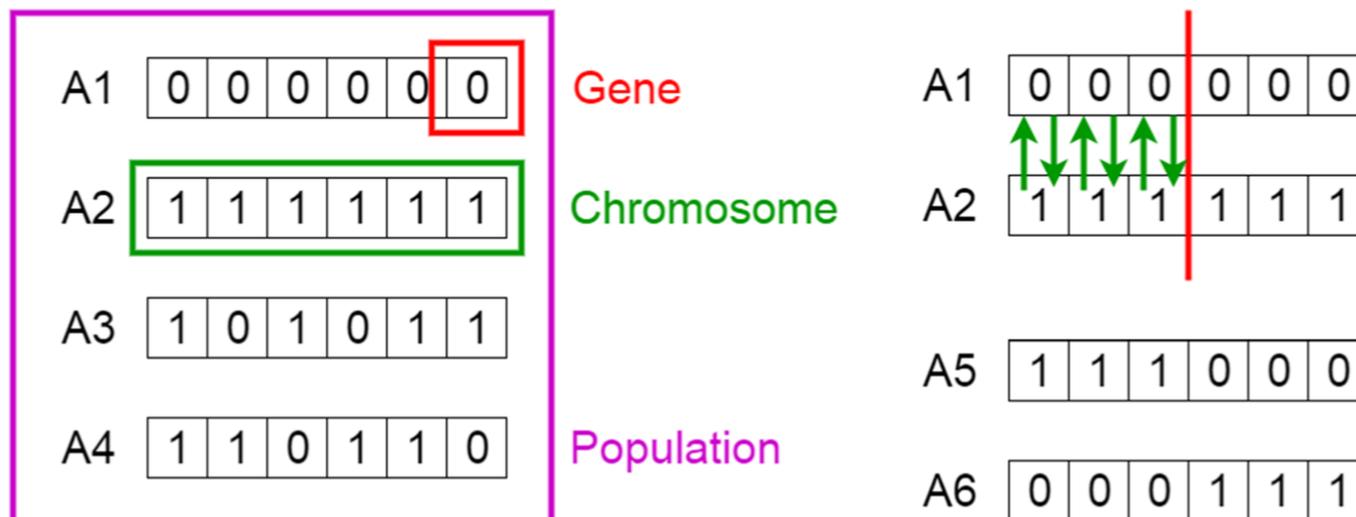
Where I started in Data Science



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Where I started in Data Science

Genetic Algorithms



Transition to the Legal Field

Transition to the Legal Field



Transition to the Legal Field



US 20020143700A1

(19) **United States**
 (12) **Patent Application Publication** (10) **Pub. No.: US 2002/0143700 A1**
Wu (43) **Pub. Date: Oct. 3, 2002**

(54) **METHOD AND APPARATUS FOR INDIVIDUAL-CENTRIC USE OF THE INTERNET**

(57) **ABSTRACT**

(76) Inventor: **Guangdian Guordon Wu**, Houston, TX (US)

Correspondence Address:
BAKER BOTTS, LLP
910 LOUISIANA
HOUSTON, TX 77002-4995 (US)

(21) Appl. No.: **09/821,502**

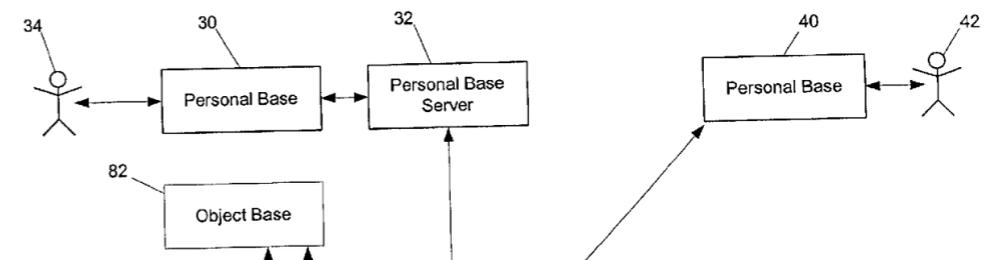
(22) Filed: **Mar. 29, 2001**

Publication Classification

(51) **Int. Cl.⁷** **G06F 17/60**

(52) **U.S. Cl.** **705/40; 705/1**

An individual-centric Internet is provided with a personal base process on a computer system. The computer system is equipped with multiple nodes that are interconnected to facilitate the communication between the nodes. The personal base service includes a personal base instance that is typically in software on at least one of the nodes of the computer system, such as a network. The personal base instance is designed to communicate with a user by any digital or analog device, such as a telephone, personal computer, personal digital assistant, or the like. A personal base server is instantiated on at least one of the nodes on the computer system and is in operative communication with the personal base instance. The personal base server is used to communicate with other personal bases or other nodes on the computer system or network in order to insulate the user from other elements of the computer system.



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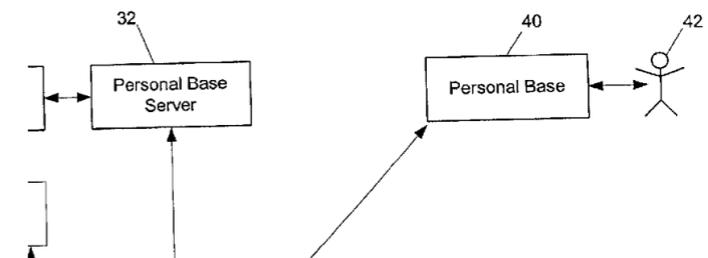
F 17/60
0; 705/1

Ownership of Data



"No, it's MY data!"

4/02



Using NLP and ML in Law

Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 77 U.S.L.W. 4387 (2009), Court Opinion

BOAT XML

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POINTS OF LAW

pleading must contain a "short and plain statement of the claim showing that the pleader is [*678] entitled to relief." As the Court held in *Twombly*, 550 U. S. 544, the pleading standard **Rule 8** announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Id.*, at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." 550 U. S., at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.*, at 557.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.*, at 570. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*, at 556. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*, at 557 (brackets omitted).

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.*, at 555 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). **Rule 8** marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for [*679] a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.*, at 556. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F. 3d, at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not "show[n]" — "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).

In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of

▶ Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 77 U.S.L.W. 4387 (2009), Court Opinion

▶ Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, 2007 ILRC 1829, 23 ILRD 11, 41 CR 567, 75 U.S.L.W. 4337 (2007), Court Opinion

▼ Ass'n of Cleveland Firefighters v. City of Cleveland, 502 F.3d 545, 26 IER Cases 1105 (6th Cir. 2007), Court Opinion

The Supreme Court has recently clarified the law with respect to what a plaintiff must plead in order to survive a Rule 12(b)(6) motion. *Bell Atl. Corp. v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Court stated that "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 1964-65 (citations and quotation marks omitted). Additionally, the Court emphasized that even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Id.* (internal citation and quotation marks omitted).

Citation Map

Related Points

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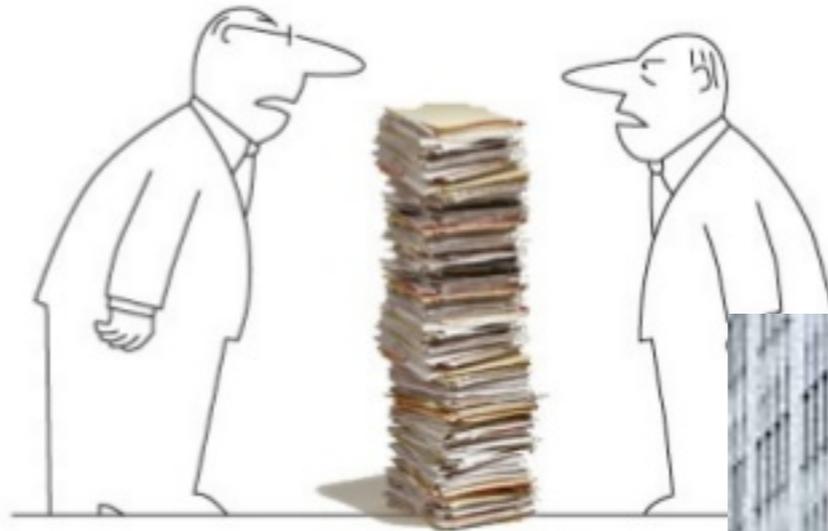
Ownership of Data



"No, it's MY data!"

A/B

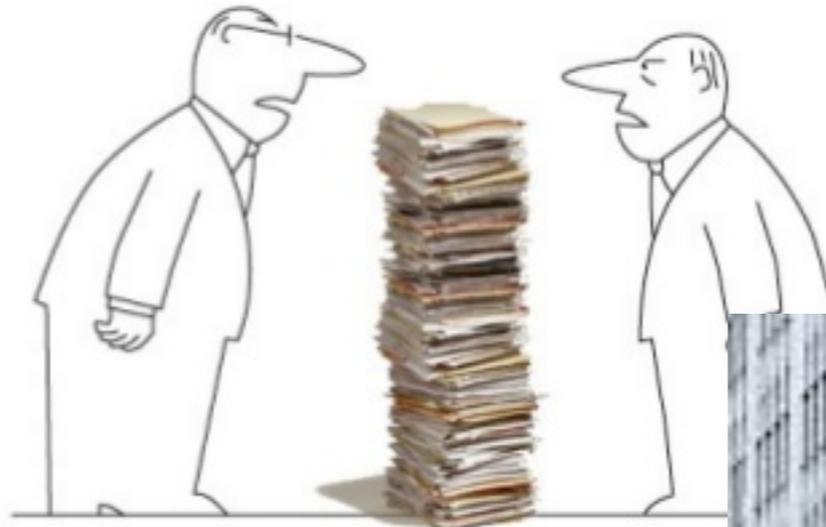
Ownership of Data



"No, it's MY data!"



Ownership of Data



"No, it's MY data!"



aka, "the Owners"

Owner's interest
translates to
legal interest



Why?

Because **law** is the
regulation of *actions*
between
people
within a jurisdiction

What those actions *mean* are data

What those actions *mean* are data

What *led* to the actions are data

What those actions *mean* are data

What *led* to the actions are data

What *transpired* in the actions are data

What those actions *mean* are data

What *led* to the actions are data

What *transpired* in the actions are data

Ramifications from the actions are data

And...

Because **law** is the
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within a jurisdiction

Law can affect data

<example>

Data are Used to Form a Contract

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- ❖ Data used to cause the customer to want something

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- ❖ Data used to cause the customer to want something
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- ❖ Data used to determine what the customer would be willing to pay
- ❖ Data used to determine if the customer would be willing to be an unpaid employee for the company

Customer data is valuable and often
obtained for free

... to the customer's detriment

Because the customer is
powerless to prevent it

Because the customer is
powerless to prevent it

(That's why we set it up that way)

Only government can
affect that imbalance

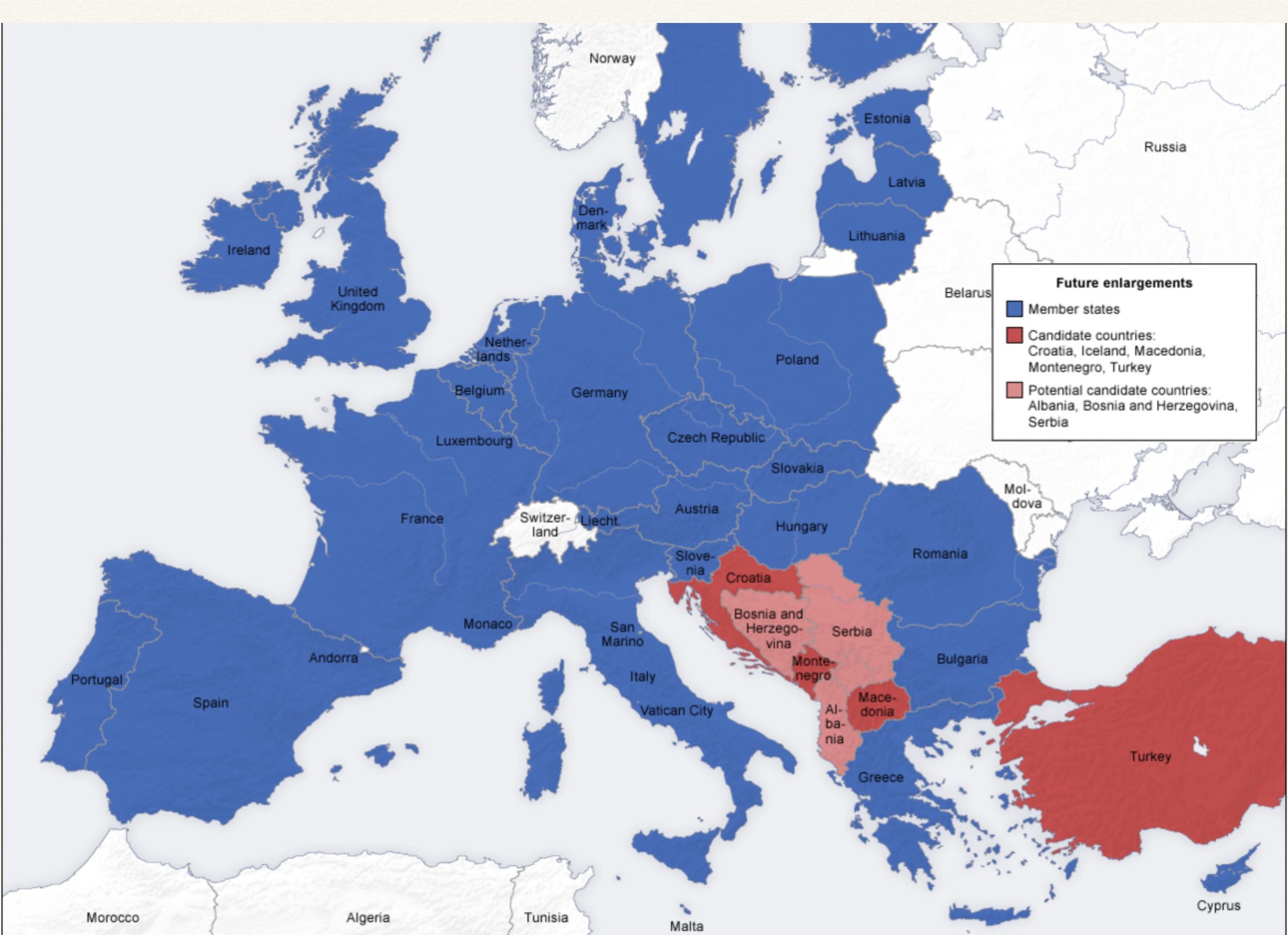
GDPR

Who Promulgated GDPR?

Who Promulgated GDPR?



The EU Parliament



GDPR Overview

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- ❖ Covers certain types of data...

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- ❖ ... of people within the EU ...

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- ❖ Covers certain types of data...
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- ❖ ... and gives those people certain rights ...

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- ❖ Covers certain types of data...
- ❖ ... of people within the EU ...
- ❖ ... and gives those people certain rights ...
- ❖ ... that you have to deal with.

But I'm not in Europe!

Doesn't Matter!

GRPR Description

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- ❖ Article 3 (territorial scope) of the GDPR

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 - ❖ ... *regardless* of where the data is kept or processed

GRPR Description

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- ❖ Article 4 (what is covered) of the GDPR

GRPR Description

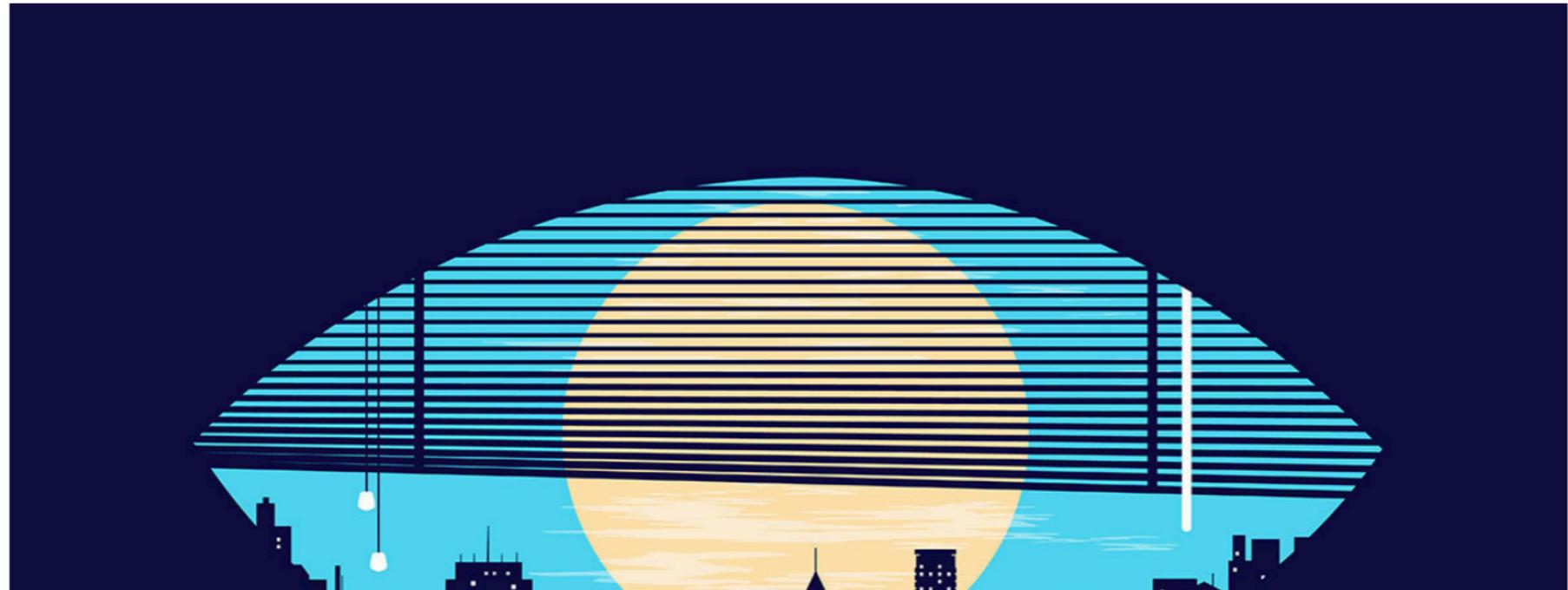
- ❖ Article 4 (what is covered) of the GDPR
 - ❖ ‘personal data’ means *any information* relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

Has Google Finally Proven That Online Ads Cause Offline Purchases?

by **Niraj Dawar**

JUNE 01, 2017

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 - ❖ to have restrictions put on the use of the data
 - ❖ to be forgotten (erasure of the data)
- ❖ Penalties (20M€ fine or 4% of gross income)

What you need to know (GDPR)

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- ❖ Know that there is no “grandfather clause” to affected data
- ❖ Know that you might have to delete affected data (no refunds)

Providing free access to primary legal materials, developing legal research tools, and supporting academic research on legal corpora.

Responding to GDPR “Right to Erasure” Requests

Recently, we received a GDPR request from our domain registrar asking that we remove a court document from our database on CourtListener. It appears that this is a growing problem for other legal publishers too, with techdirt doing a write up of the issue late last week:

GDPR Being Used To Try To Disappear Public US Court Docket <https://t.co/PIXcm0wl4n>

— techdirt (@techdirt) September 21, 2018

GDPR is a major development in the regulation of the Internet. It includes protections for individuals and a variety of regulations that apply to service providers like us. When GDPR went into effect, we were easily able to comply with its numerous privacy regulations because we were already being extremely conservative about who we shared data with and how much data we collected (see our privacy policy for details). For us, adopting compatible procedures with the GDPR just meant a few tweaks — no big deal.

Until last week that is, when we received a “Right to Erasure” request demanding that we remove a case from CourtListener. Now we have an EU regulation that’s at odds with our goal of gathering and sharing important legal information. What’s worse, if we complied with this request, we would be removing precedential information from CourtListener. Our policy is to never do that without a court order from a competent jurisdiction. In short, this take down request is at odds with our goals — and with the

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Oh, by the way...

The ePrivacy Directive

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- ❖ Also by the EU Parliament

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- ❖ The ePrivacy Directive ensures the protection of fundamental rights and freedoms, in particular the respect for private life, *confidentiality of communications and the protection of personal data in the electronic communications sector.*

Don't Lose Sight of the Big Picture

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- ❖ More squabbles over data are forthcoming, because...

GDPR-like Provisions Will Become
De-rigor (and Ubiquitous)

Things to Consider

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- ❖ Law will be used to *regulate* who gets what data and how
- ❖ Law will be used to *generate* artificial **scarcity** of data

Forthcoming Data Squabbles *Will*
Affect on Your Job

Forthcoming Data Squabbles *Will* Affect on Your Job

(Again, GDPR is simply symptomatic)

Remember...

Remember...



But...

But...

Won't all this impede
AI development?

Sure!

Won't that hurt society?

Yes!

Don't the Owners care?

No!

A Movie About the Owners

The Corporation (2003)

- Irresponsible and manipulative
- Grandiose
- Lacking in empathy
- Multi-faceted, flexible identity
- Loves to play games
- Ego-driven and ruthless



Opinion US politics

America's new aristocracy lives in an accountability-free zone

David Sirota

Accountability is for the little people, immunity is for the ruling class. If this ethos seems familiar, that is because it has preceded some of the darkest moments in human history

@davidsirota
Fri 5 Oct 2018 02:00 EDT

10,661



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Incredibly, Conor McGregor may profit from his farcical fight with Nurmagomedov



Live Brazil election results: runoff looms after far-right candidate fails to secure majority- live



Khabib Nurmagomedov taps out Conor McGregor then sparks melee in crowd



Live UFC 229: Khabib Nurmagomedov taps out Conor McGregor then brawls in crowd - as it happened



Limo crash leaves 20 people dead in upstate New York, authorities say

Lots of examples from the past...



Photo Anne Schrader
www.dreamdestination.com

Questions?



Ronald Chichester

713.302.1679

Ron@RonaldChichester.com

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