

# Les effets de la surveillance numérique

Journée de la protection des données  
28 janvier 2021



# Surveillance Matrix

	State	Corporations	User
State	<b>Spying, secret services</b>	<b>Industry oversight and control, auditing, private/public-surveillance partnership</b>	<b>Citizen tracking and management (e.g., PRISM)</b>
Corporations	<b>Close monitoring of government decisions, lobbying</b>	<b>Industrial espionage, competitor research</b>	<b>Profiling</b>
User	<b>Hacking, sousveillance (e.g., Anonymous, Wikileaks)</b>	<b>Consumer rights and civil society privacy initiatives geared at corporations (e.g., AlgorithmWatch, EFF)</b>	<b>Stalking</b>

# Le profilage

«profilage», toute forme de traitement ***automatisé*** de données à caractère personnel consistant à utiliser ces données à caractère personnel ***pour évaluer certains aspects personnels*** relatifs à une personne physique, notamment pour *analyser* ou *prédire* des éléments concernant le rendement au travail, la situation économique, la santé, les préférences personnelles, les intérêts, la fiabilité, le comportement, la localisation ou les déplacements de cette personne physique;

# Exemples de profilage

## Life Insurance

New York life insurers can use social media profiles to determine insurance premium rates

## Advertising

Google bought purchasing records from MasterCard to measure the success of its search advertising

## Creditworthiness

FriendlyScore harnesses social media data to create “scorecard” profiles of users which are used to determine creditworthiness

## Job Performance

AI systems that assess candidate videos based on language and facial cues such as HireVue

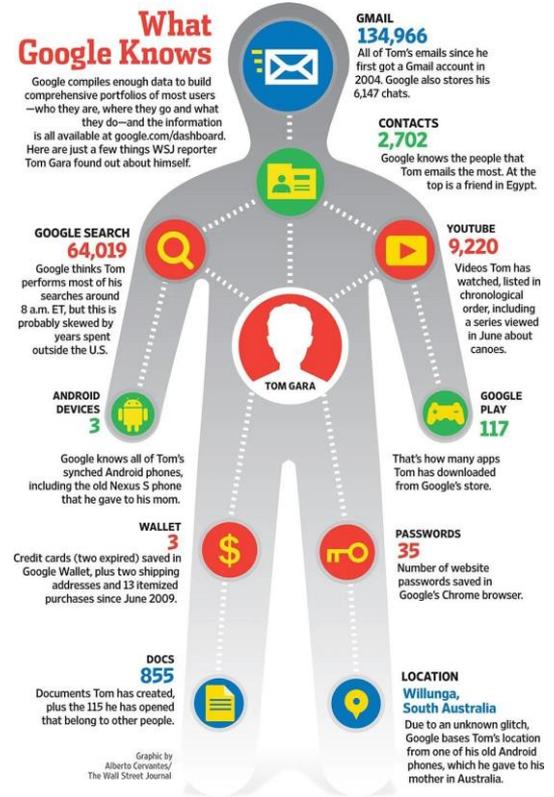
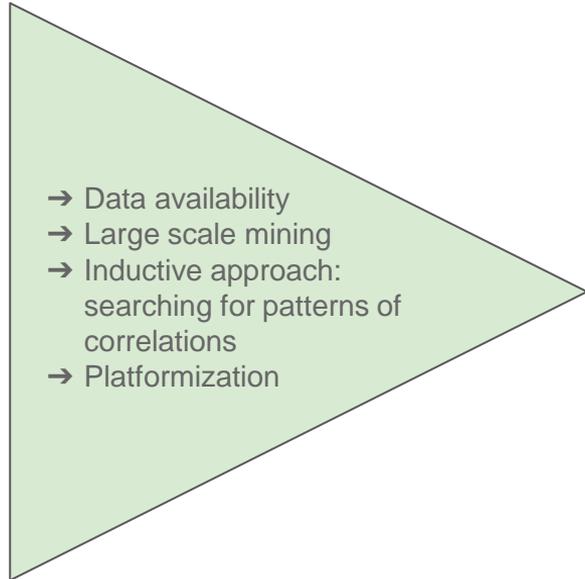
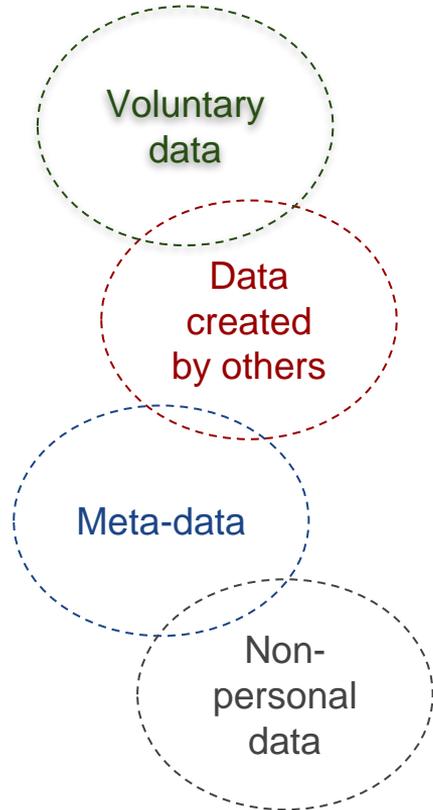
## Criminal Activity

Half of all American adult faces - including innocent ones - can be found in a police face recognition database; racial profiling disproportionately affects African Americans

## Social Scoring

Chinese Social Credit System plans to “score” its citizens based on day to day behavior

# Dataveillance



What Google Knows (The Wall Street Journal, 2015)

Sample of an ad bought by Times Opinion (not a live ad):

This ad thinks you're trying to lose weight but still

Facebook told advertisers it can identify teens feeling 'insecure' and 'worthless'

Leaked documents said to describe how the social network shares data with advertisers

LIKELY BROWSING HISTORY

Google

climate  
climate  
climate  
climate  
climate  
Press Enter

Update Status Add Photos/Video

Going out for a pizza

Public Friends and the NSA Only Me and the NSA Only the NSA Close Friends and the NSA Hide from the NSA (Nice try!)

Friends Post

Detailed description: This is a screenshot of a Facebook status update interface. At the top, there are buttons for 'Update Status' and 'Add Photos/Video'. Below these is a text input field containing the text 'Going out for a pizza'. Underneath the text field is a row of icons for adding people, location, photos, and emojis. To the right of these icons is a dropdown menu currently set to 'Friends', and a 'Post' button. The dropdown menu is open, showing a list of privacy options: 'Public', 'Friends and the NSA' (which is selected with a checkmark), 'Only Me and the NSA', 'Only the NSA', 'Close Friends and the NSA', and 'Hide from the NSA (Nice try!)'. The entire interface is framed by a thick black border.



- Google Search  
definition  
organizations  
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art

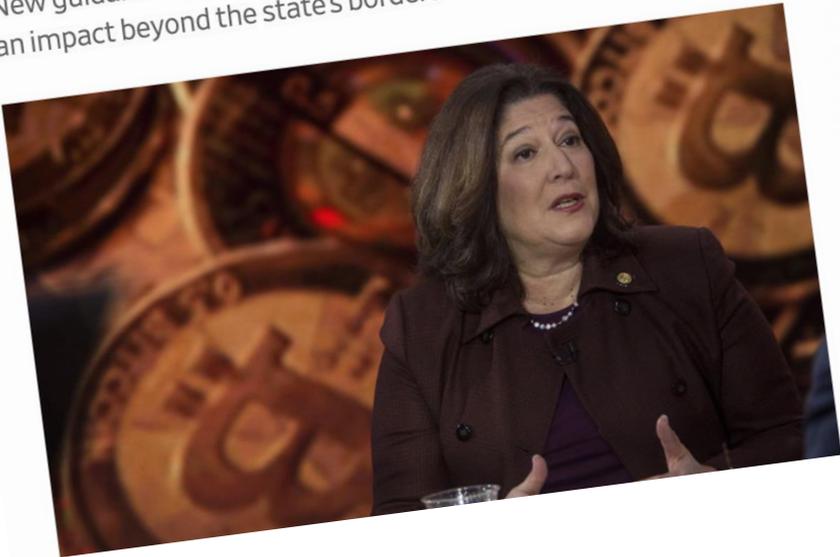
climate change quizlet

MARKETS

# New York Insurers Can Evaluate Your Social Media

## —If They Can Prove Why It's Needed

New guidance applies to companies operating in New York, but industry consultants say it could have an impact beyond the state's borders



### WHAT YOU PAY FOR LIFE INSURANCE COULD DEPEND ON YOUR NEXT INSTAGRAM POST

Some life insurers want to monitor how you behave online as a way of assessing your health and bypassing more traditional blood and urine samples. Here are five online actions that may help you avoid the medical exam.

- Don't post photos of yourself smoking on social-media sites.
- Do post photos of yourself running. Riskier sports, like skydiving, could complicate the situation.
- Use fitness-tracking devices that indicate an interest in fitness.
- Purchase food from online meal-preparation services that specialize in healthy choices.
- Visit the gym with a phone linked to a location-tracking service. If you visit the bar, leave your phone at home.

# Chilling effects? (effets de dissuasion)

- Awareness and digital literacy impact whether chilling effects occur
- Chilling effects defined as
  - Deterrences or inhibitions to act in a certain way
  - Behavioral inhibitions can manifest as self-censorship, self-restraint, conformity, etc.
- Different effects depending whether state agencies or private companies are conducting the profiling and tracking activities
- Role of trusting beliefs towards companies and state surveillance on chilling effects still needs to be analyzed

# La “law of everything” comme solution?

## GDPR bypass by design? Transient processing of data under the GDPR

Damian George ✉, Kento Reutimann, Aurelia Tamò-Larrieux

*International Data Privacy Law*, Volume 9, Issue 4, November 2019, Pages 285–298,

<https://doi.org/10.1093/idpl/ipz017> 🔗

**Published:** 20 September 2019 **Article history** ▼

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### Key Points

- In search of privacy-friendly facial detection and autonomous driving software, data controllers are discovering that processing data merely transiently might not only be in compliance with the data minimization principle, but also exclude their activities from the General Data Protection Regulation (GDPR) altogether.



Computer Law & Security Review

Volume 40, April 2021, 105486



## Data protection law beyond identifiability? Atmospheric profiles, nudging and the Stratumseind Living Lab

Maša Galič <sup>✉</sup>, Raphaël Gellert <sup>✉</sup>

individual or group profiling, the SLL and similar initiatives rely upon what we have called ‘atmospheric profiling’. We conclude that it remains highly uncertain, whether smart city initiatives like the SLL actually process personal data. Yet, they still pose risks for a wide variety of rights and freedoms, which data protection law is meant to protect, and a need for regulation remains.

# Résoudre des problèmes collectifs avec des mesures de contrôle individuel?



# Historic victory for privacy as dating app receives gigantic fine

26. januar, 2021

Today, the Norwegian Data Protection Authority issued an advance notification of a 100 million NOK (€ 9 600 000) fine to the dating app Grindr, as a result of a legal complaint filed by the Norwegian Consumer Council.



Finn Myrstad

Fagdirektør digitale tjenester

# Une interprétation plus large des principes fondamentaux?



Fairness understood as procedural guidelines targeted at companies employing automated decision-making systems



Accuracy understood as overall competence of an automated decision-making system



Collective data protection measures and auditing of automated decision-making systems

# Introduire des nouveau droits et standards sur la manière dont les données sont traitées?

## A Right to Reasonable Inferences: Re-Thinking Data Protection Law in the Age of Big Data and AI

*Columbia Business Law Review, 2019(2)*

130 Pages • Posted: 5 Oct 2018 • Last revised: 25 Jun 2019

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*“This right would require ex-ante justification to be given by the data controller to establish whether an inference is reasonable.*

*This disclosure would address:*

*(1) why certain data form a normatively acceptable basis from which to draw inferences;*

*(2) why these inferences are relevant and normatively acceptable for the chosen processing purpose or type of automated decision; and*

*(3) whether the data and methods used to draw the inferences are accurate and statistically reliable.*

*The ex-ante justification is bolstered by an additional ex-post mechanism enabling unreasonable inferences to be challenged.”*

**Merci pour votre attention!**