

**HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT**

NORA

Norwegian Artificial
Intelligence Research
Consortium

Kristiansand

Presentation
6 May 2022

Startup Event

Council of Europe AI Policy Development

Human Rights, the Rule of Law and Democracy

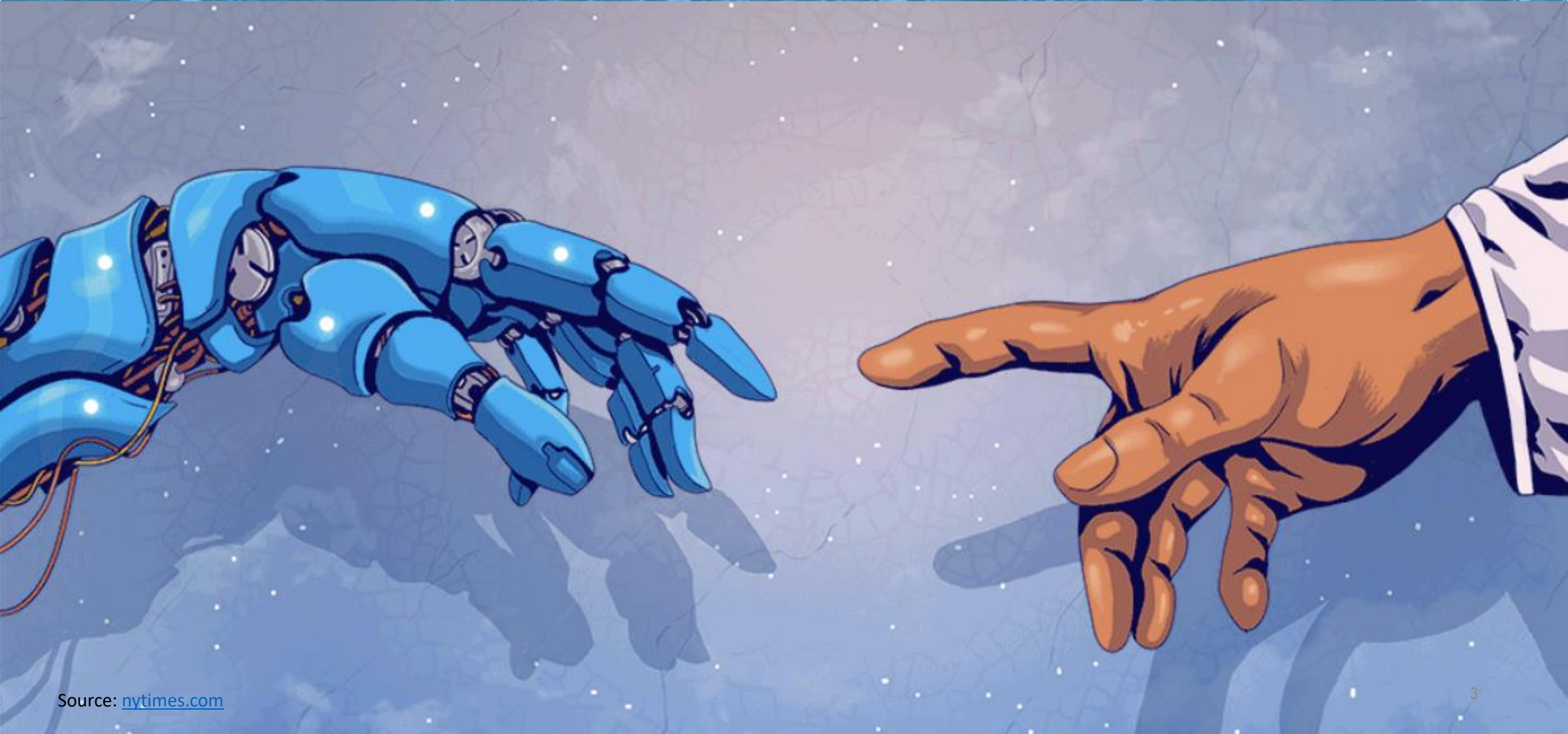
Patrick Penninckx
Head of Information Society Department



CONTENT

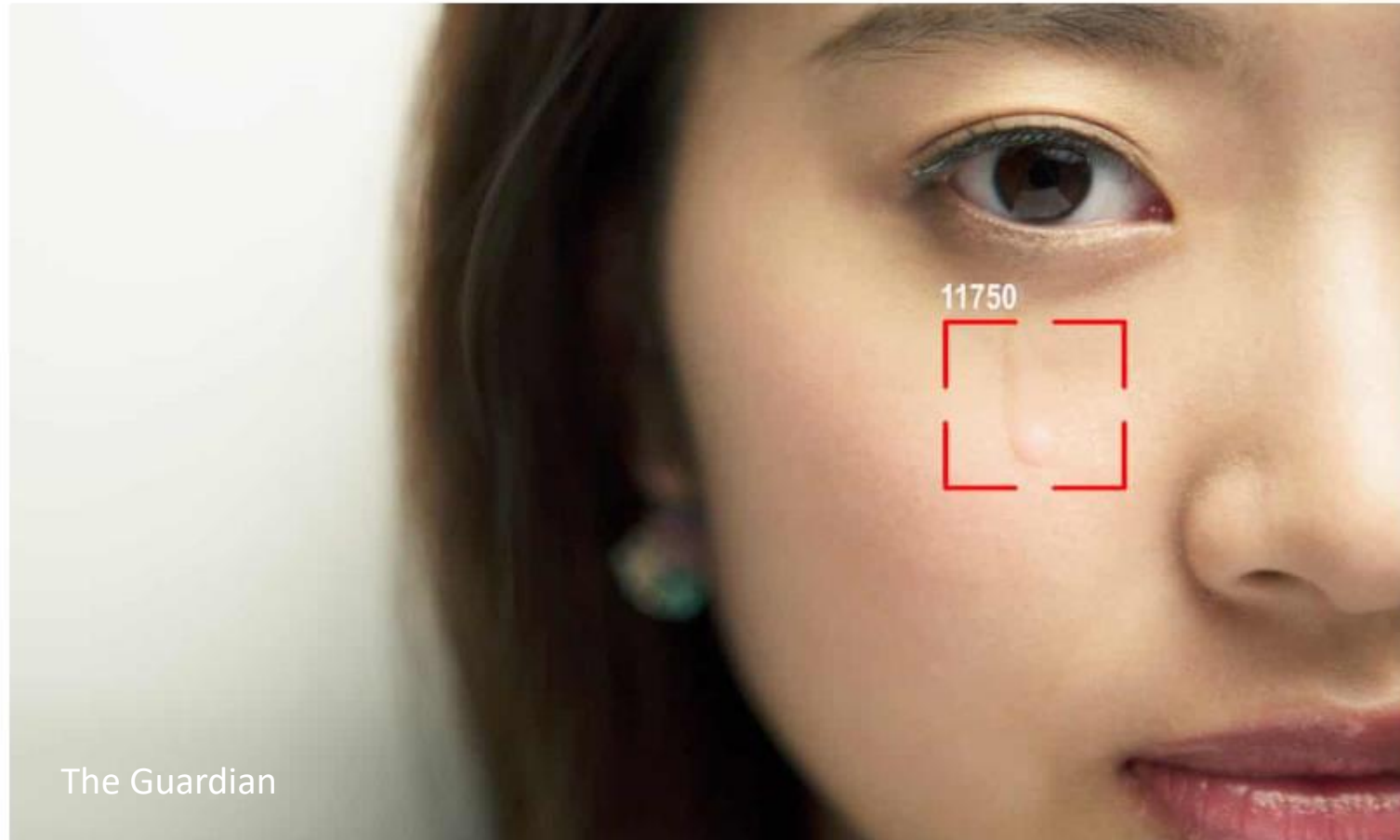
- Latest technological developments
- Impact on human rights and democracy
- Council of Europe responses

The technological revolution spreads...



Machines are getting smarter

Machines can now allegedly identify anger, fear, disgust and sadness. 'Emotion detection' has grown from a research project to a \$20bn industry



The Guardian

We all live in a new digital sphere





...but technology also divides



The digital world is unstable



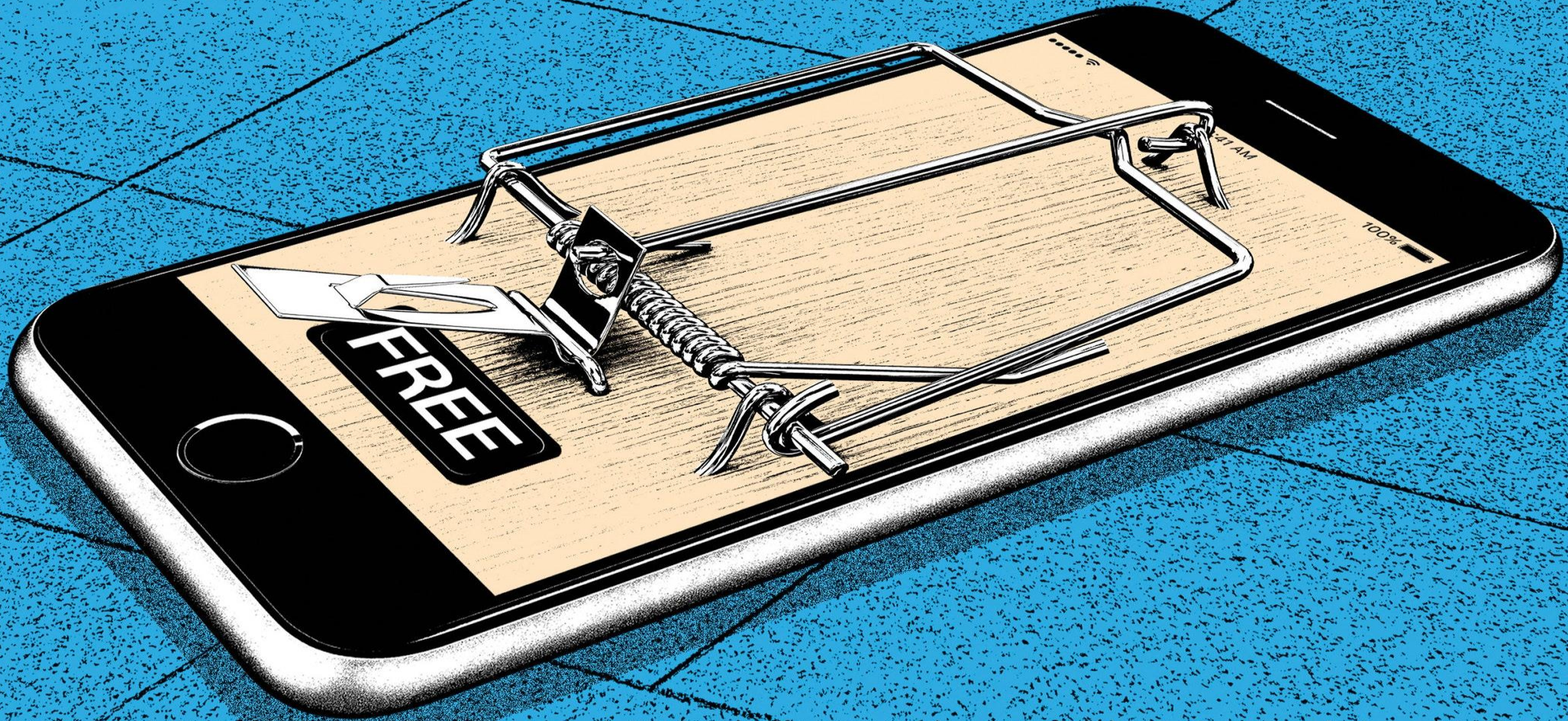
In October 2021 Facebook and its subsidiaries Instagram and WhatsApp went down for nearly 12 hours.

- Disconnecting 2.89 billion users
- Disconnecting 6 million advertisers

The outage had also cost the global economy about \$160 million per hour.

Source: [thedailystar.net](https://www.thedailystar.net)

Is technology a bounty or a trap?



The new world is challenging

Yuval Noah

Harari



21 Lessons
for the
21st Century

**The world has never felt
more unequal.**

Will machine learning and robotics
make humans economically
redundant ?

**Am I moral if I do nothing
when there is a refugee crisis?**

**Algorithms already control
much of our daily lives.**

Volatile societies...

**No one knows what the future
will look like.**

The new world is unstable



The U.S. dollar and the euro will face threats from digital currencies such as Bitcoin.

Source: [livemint.com](https://www.livemint.com)



AI-powered propaganda, by ratcheting up cognitive manipulation and societal polarization, will increase.

Source: penser-critique.be

Tomorrow will be different...



Artificial intelligence, quantum computing, 5G and the rise of the Internet of Things are just some of the emerging technologies that influence the way our society operates.

1930 vision of the future



Welcome to the
Metaverse...



The new virtual world is in the making



"... the metaverse is the ultimate expression of **social technology**".
M. Zuckerberg

The metaverse, short for "meta-universe," is a digital world where the real and virtual merge into a vision of science fiction.

Facebook announced it plans to **hire 10,000 people in the European Union** to build the metaverse.

Source: [euronews.com](https://www.euronews.com)

What Jurisdiction to Metaverse ?

Because of the **psychological and physiological aspects** of immersive technologies, and the **potential for a new invasive class of harms**, the **policy makers should work together with the technological industry** and scientist research to **explore the challenges** and measures to be taken to **ensure the enjoyment of the benefits** of the VR and the Metaverse, while **preventing its potential negative impacts**.



Impact on Human Rights

- ✓ Privacy
- ✓ Surveillance
- ✓ The role of internet intermediaries
- ✓ Fake news and hate speech
- ✓ Elections
- ✓ Access to information
- ✓ Cybercrime
- ✓ Discrimination

Impact on Human Rights

✓ **Privacy**

My personal data are public



Personal data are not protected

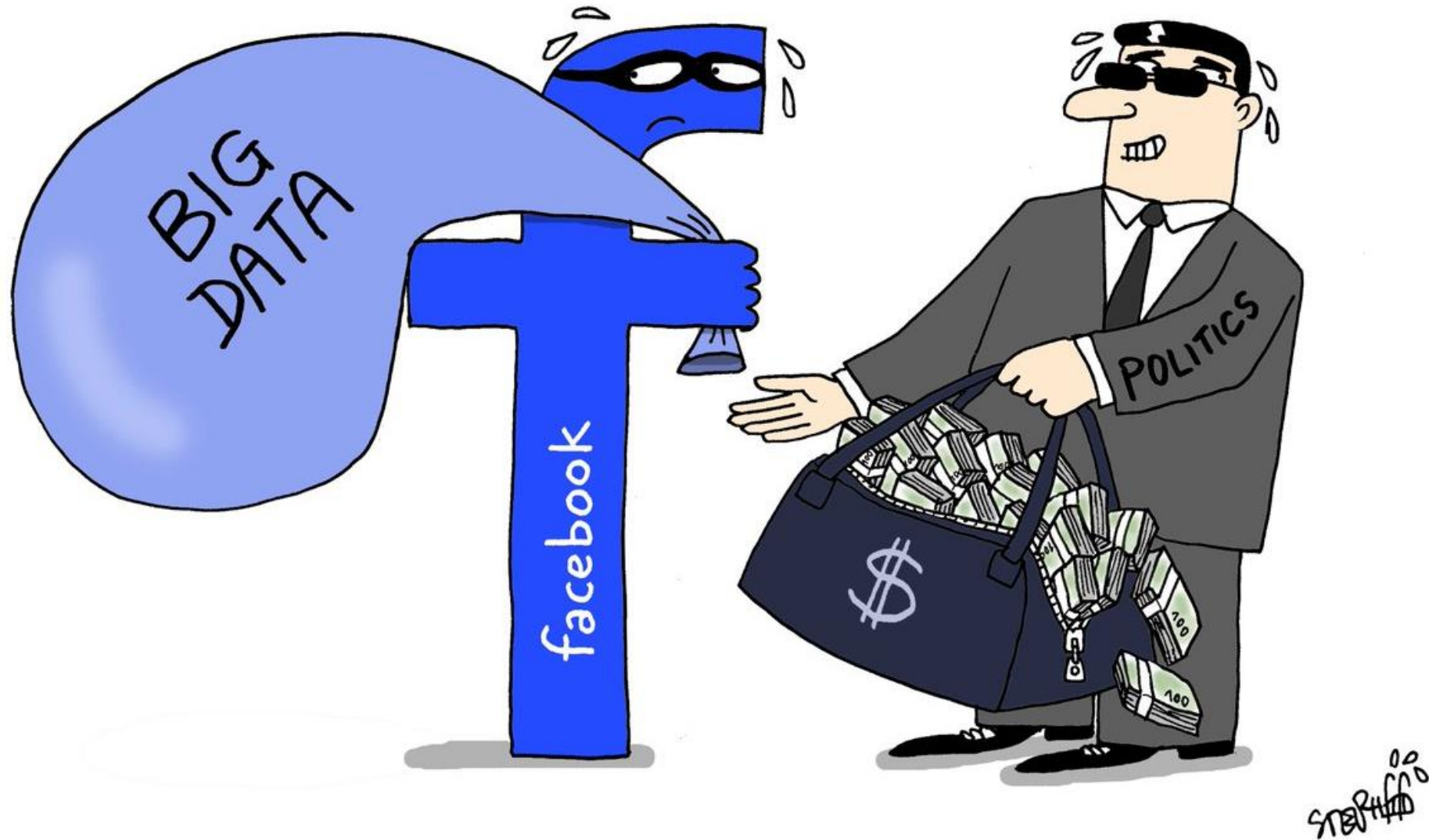
"Once data has been exposed to the world, it can't be undone,"

Almost entire population of Ecuador had data leaked !



FISCALÍA GENERAL DEL ESTADO/TWITTER

My data becomes a commodity



Privacy and public safety collide



Source: Do not let the spies weaken encryption, [FT](#)

Impact on Human Rights

✓ Surveillance

I am always watched

Your face: a \$20bn industry

The Guardian



▲ Monitors display a video showing facial recognition software in use at the headquarters of the artificial intelligence company Megvii, in Beijing. Photograph: New York Times/eyevine



The government surveys minorities



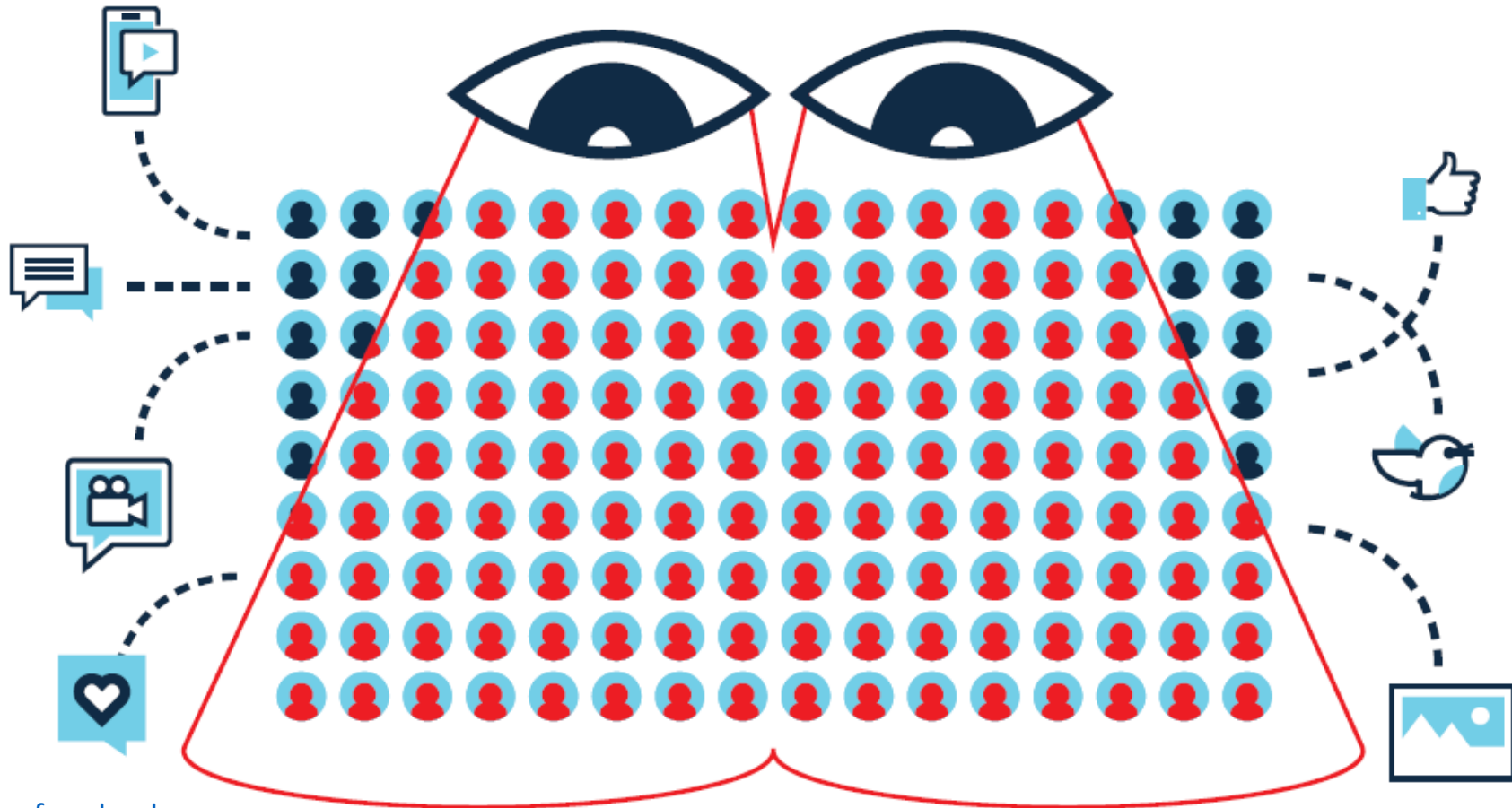


Technology encourages social control



UNDER THE WATCHFUL EYE OF SOCIAL MEDIA SURVEILLANCE

40 of the 65 countries covered by *Freedom on the Net* have instituted advanced social media surveillance programs. That means 89% of internet users—or nearly 3 billion people—are being monitored.



Impact on Human Rights

✓ The role of
internet
intermediaries

Platforms manage social contacts

Friends



Platforms influence politics

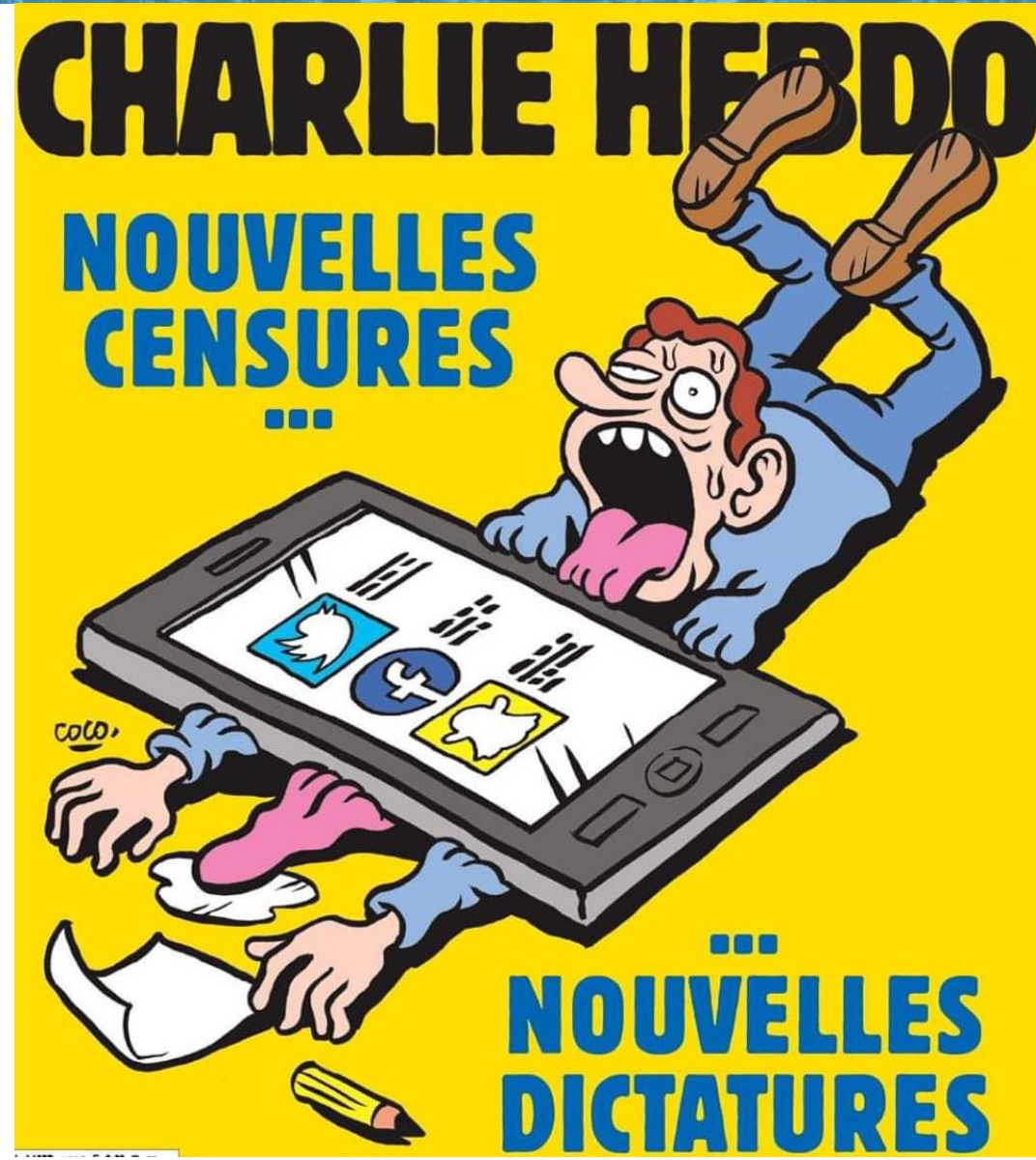


GAFAM are the main lobbyists in Brussels

140 lobbyists are influencing EU policies on behalf of 10 largest tech companies – Google, Apple, Facebook, Amazon and Microsoft and also IBM, Huawei, Vodafone, Qualcomm and Intel.

The Brussels “digital lobby” spent €97 million – 10 times more than that of the automobile industry

In total 1500 lobbyists are mobilised by 612 companies from the technology sector for €32 million annually





1,3 bn
users

100 mil in Europe

Source: [cisecurity.org](https://www.cisecurity.org)

Why is TicToc considered a threat to Democracy?

- **Collection of PII and User Data** – The App collects sensitive data about users, even when those users neither saved nor shared their content. This presents a security threat for users due to the 2017 Chinese National Intelligence Law, which states that “any organization or citizen shall support, assist and cooperate with the state intelligence work in accordance with the law.”
- **Violations of COPPA** - TikTok collects data from all age groups and, in doing so, regularly violates the Children’s Online Privacy Protection Rule of 1998 (COPPA).
- **Censorship** - the app’s censorship of any content critical of Chinese state interests.

Am I a customer or a product?



Impact on Human Rights

✓ Fake news &
Hate speech

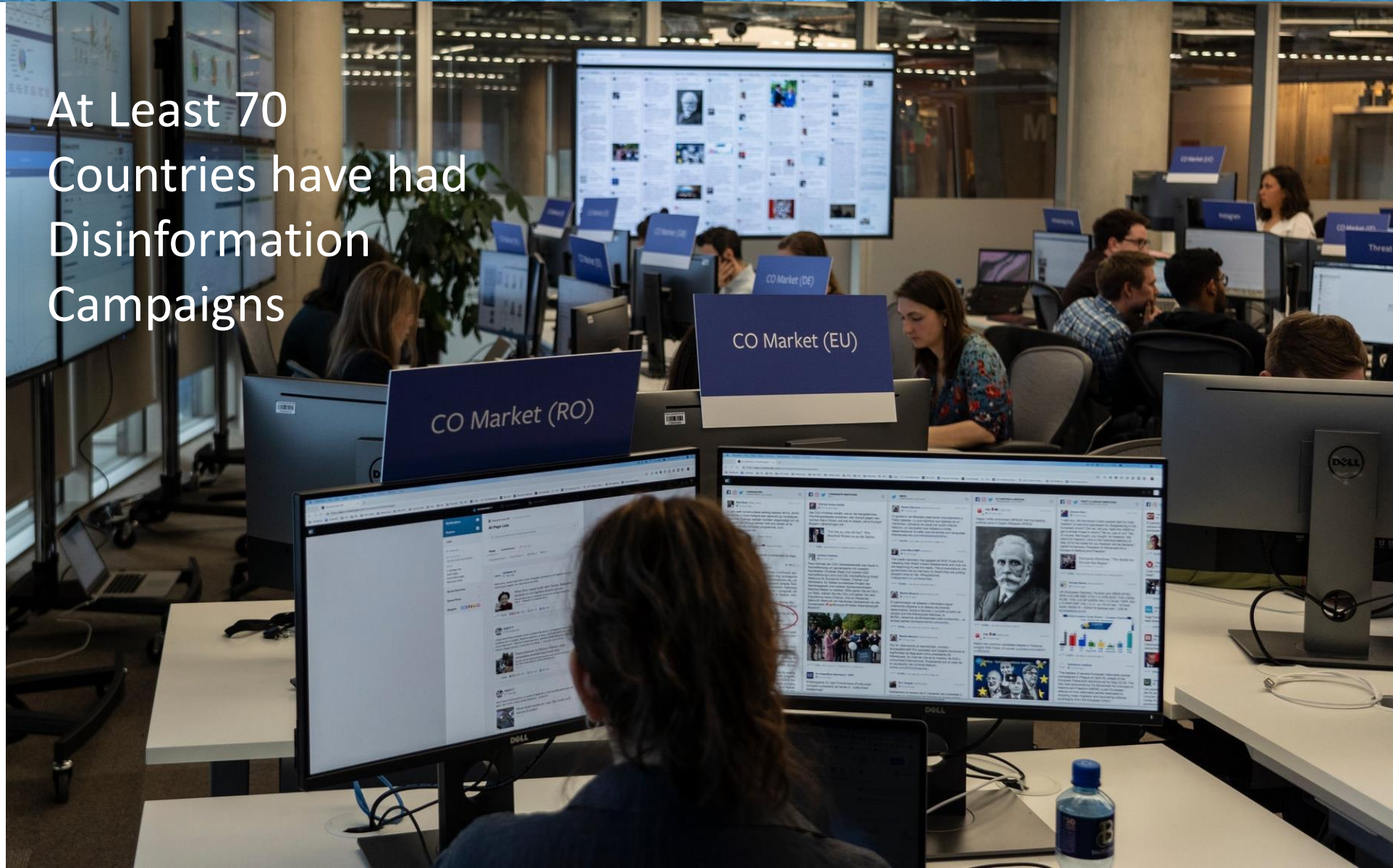
Fake news are spined online



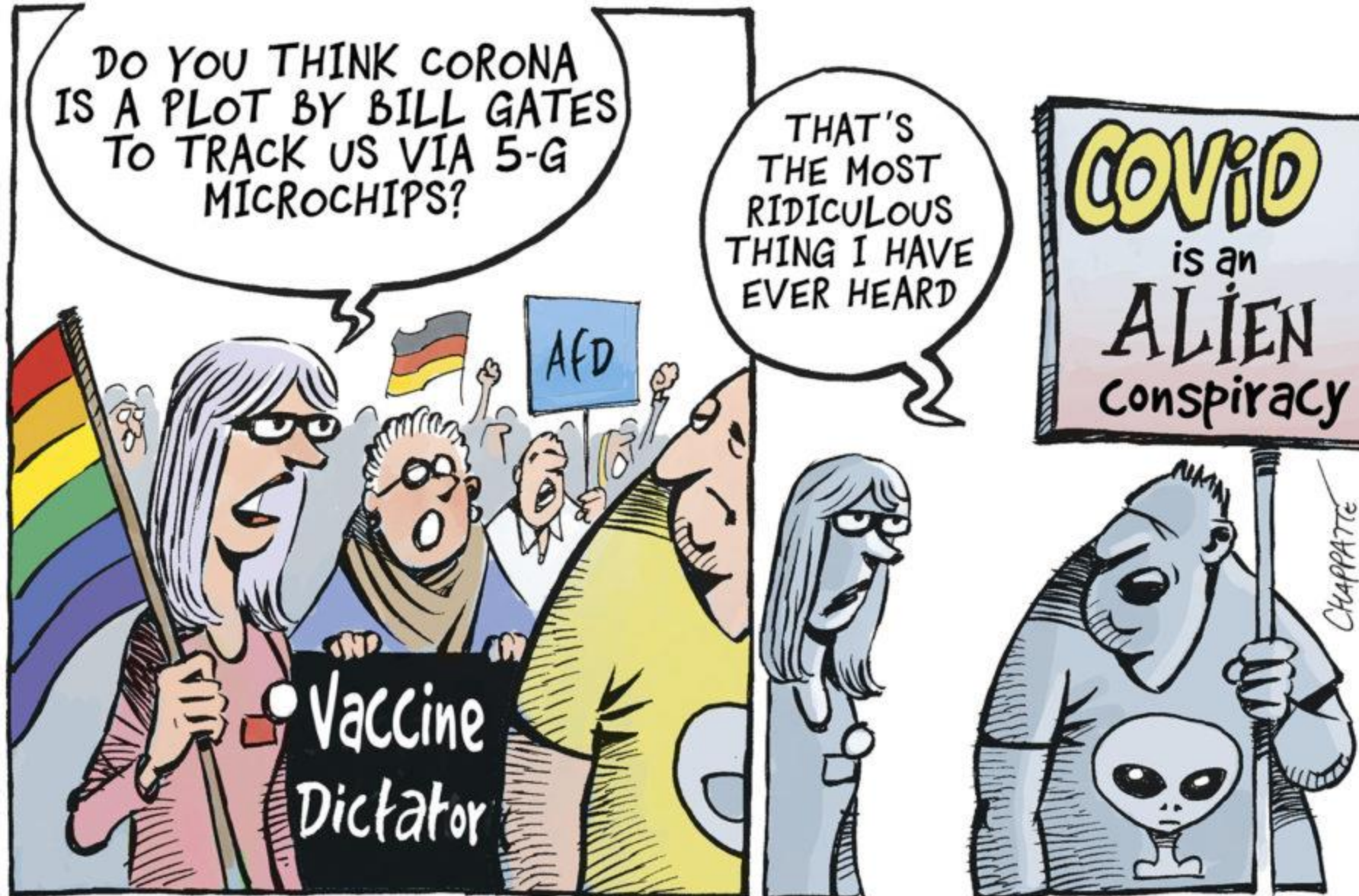
... as well as hate speech



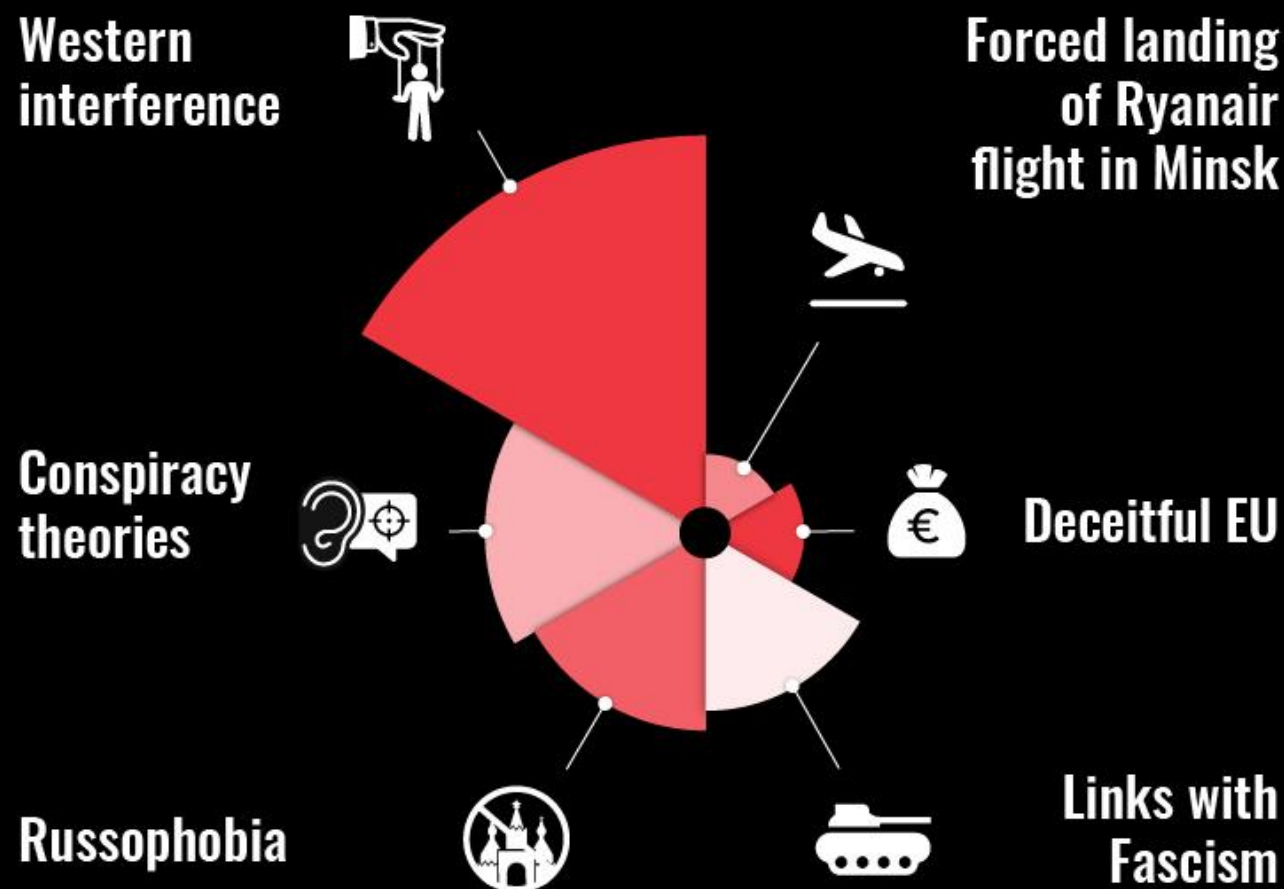
At Least 70
Countries have had
Disinformation
Campaigns



Conspiracies and fake news thrive



TOP DISINFORMATION NARRATIVES ABOUT BELARUS



Democracies are a target

ARTICLES WITH DISINFORMATION CLAIMS IN THE GERMAN LANGUAGE
HAVE BEEN LIKED, SHARED AND COMMENTED ON SOCIAL MEDIA MORE
THAN

100 000 TIMES*



Source:
euvdisinfo.eu

Fakes used as propaganda tools

TENS OF THOUSANDS OF MUSCOVITES WERE
BRIBED OR FORCED TO DEMONSTRATE UNITY
BEHIND THE LEADER.



Source:
euvdisinfo.eu

SM enhance a fake perception of reality



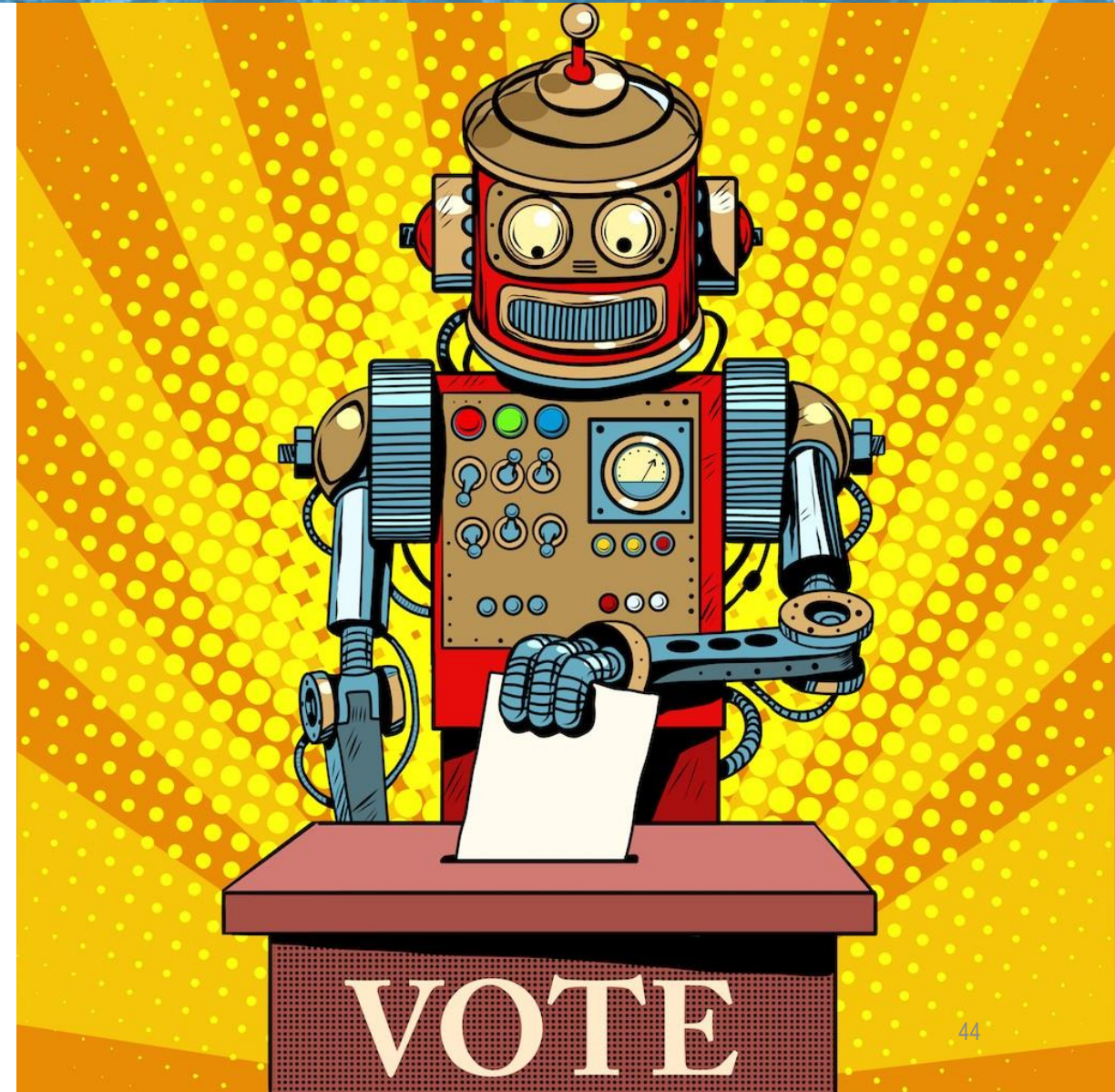
AI is used to spread misinformation

Facebook's own targeted advertising system was leveraged to display content and ads at users with respect to their psychological profiles.

By knowing the behavioural and psychographic profiles of voters, AI can be used to send political messages that are insincere and fake.

Source:

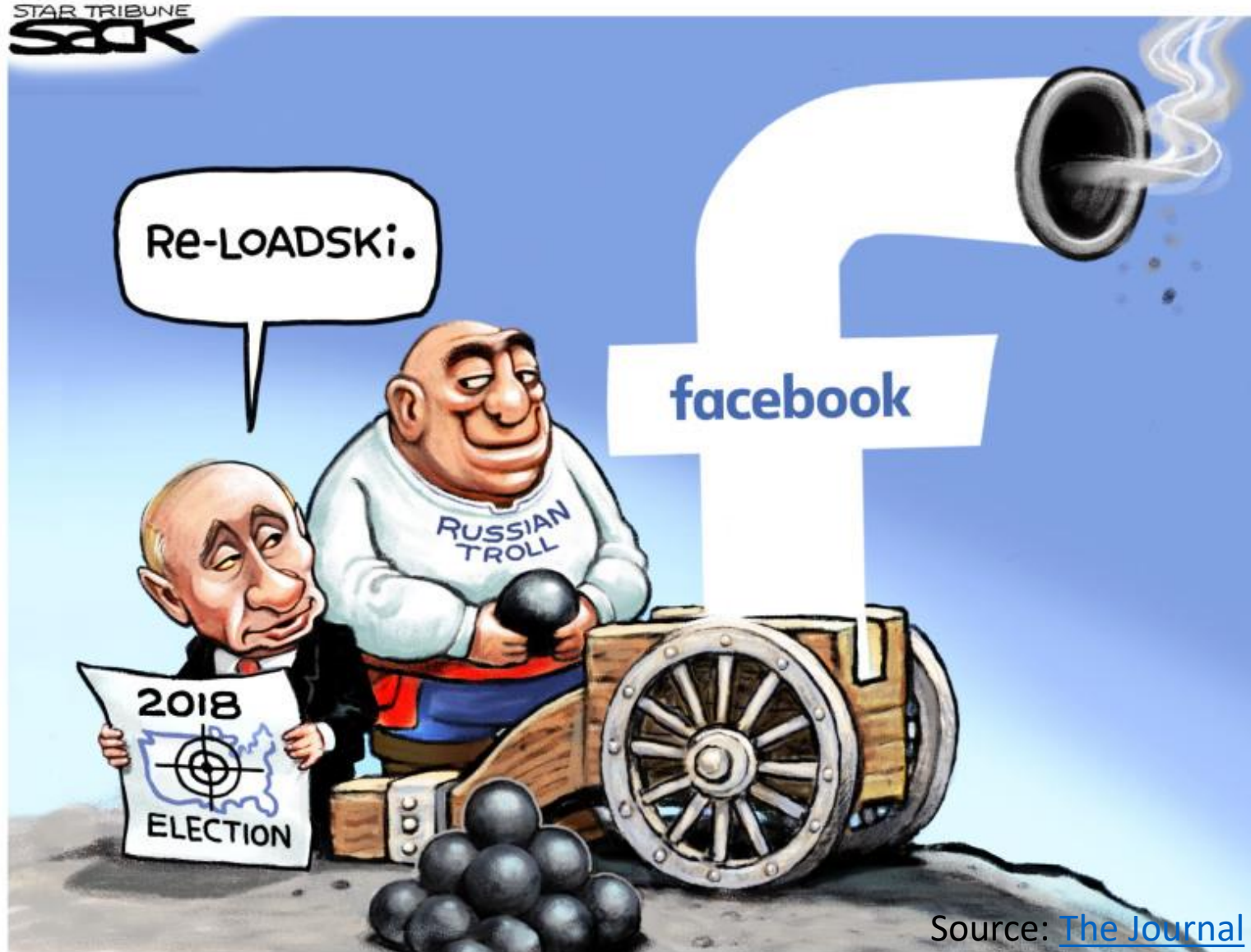
mygreatlearning.com



Impact on Human Rights

✓ **Elections**

Disinformation rigs elections



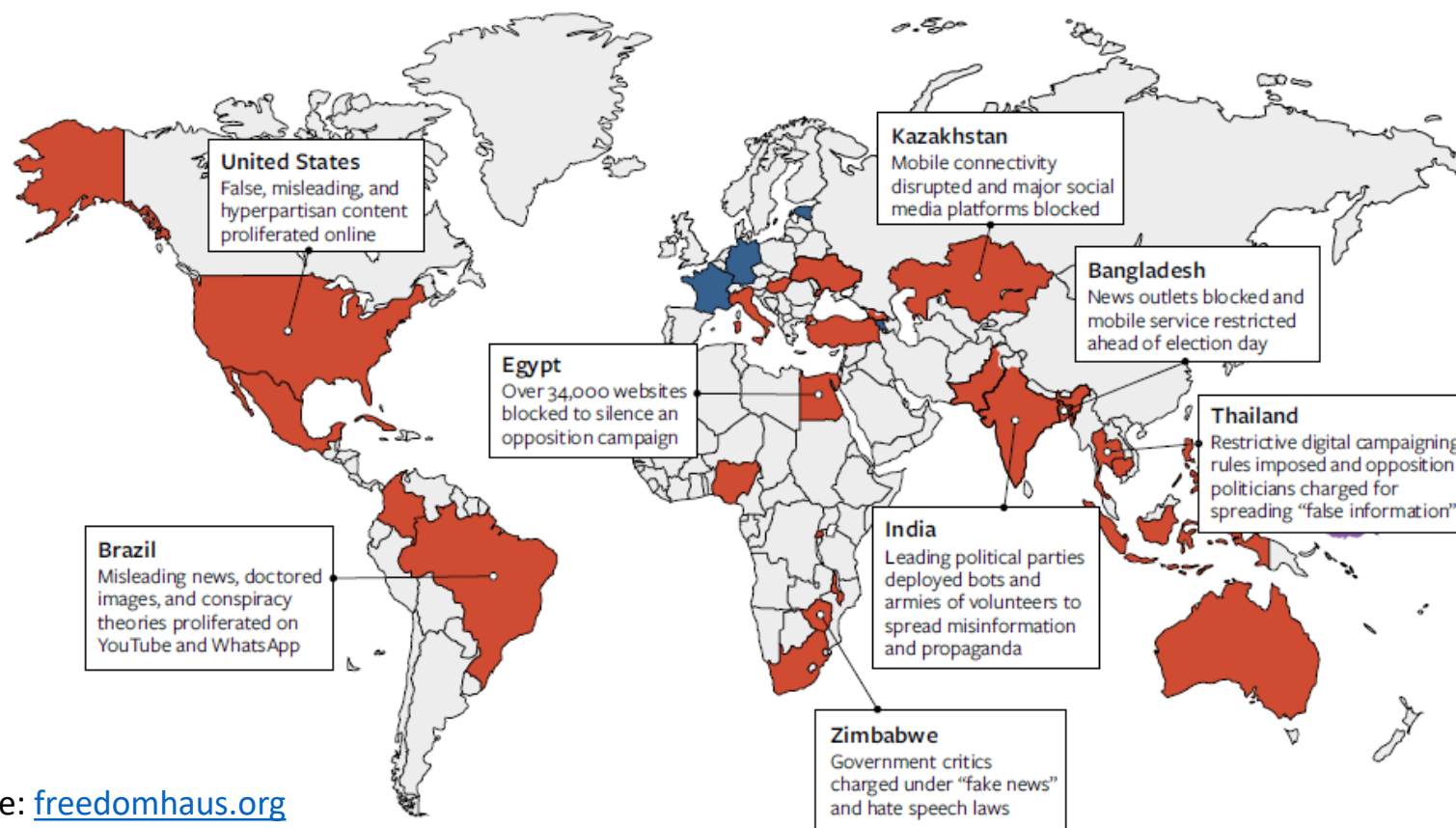
Source: [The Journal](#)

Microtargeting influences voters



THE GLOBAL PHENOMENON OF DIGITAL ELECTION INTERFERENCE

Domestic actors interfered online in 26 of 30 countries that held elections or referendums over the past year.



With Election Interference



Without Election Interference

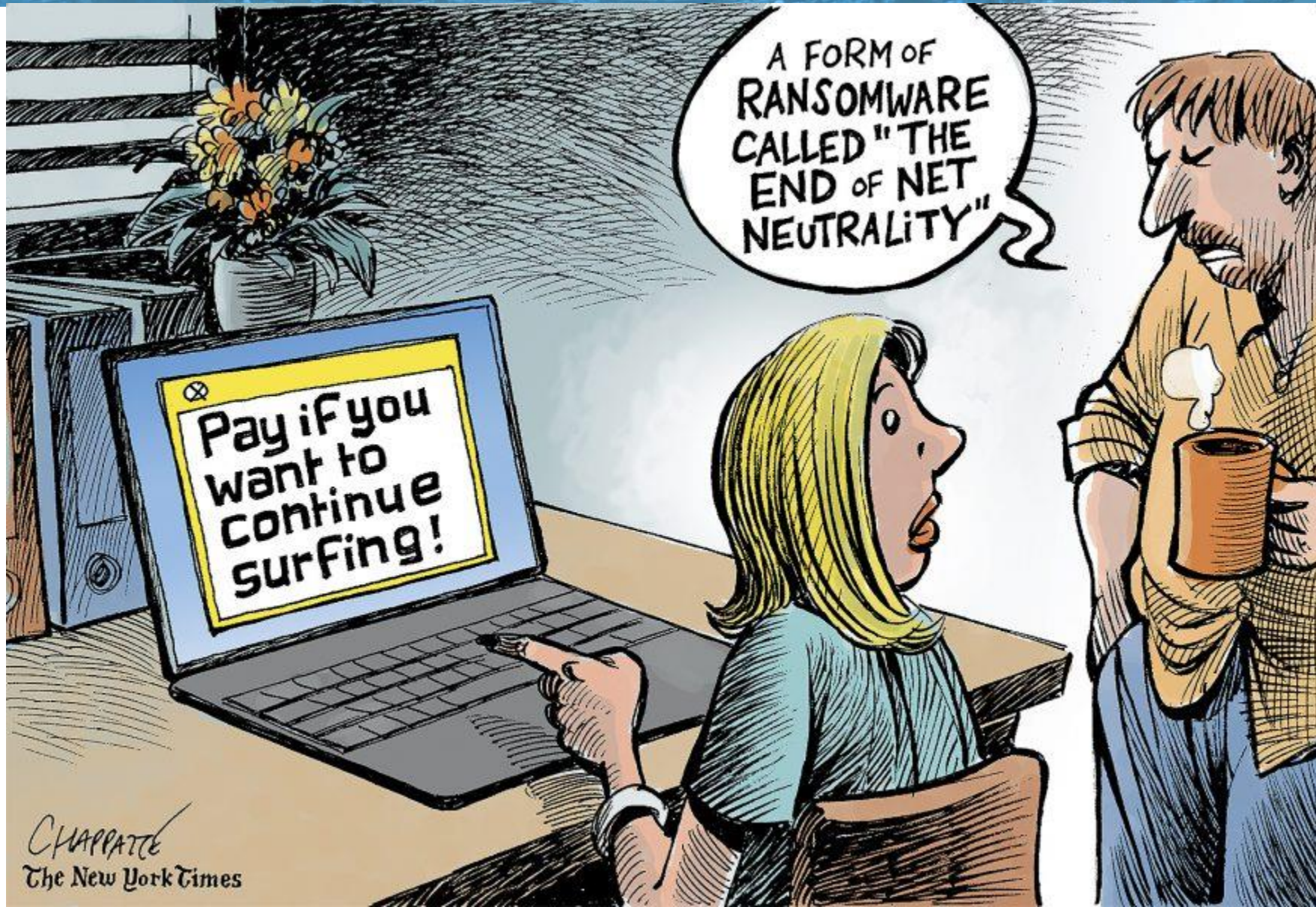


No Data

Impact on Human Rights

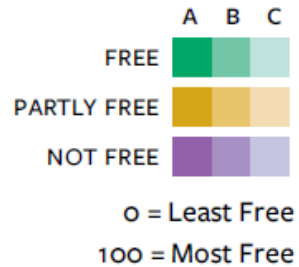
✓ **Access to
information**

The access to the net is not free

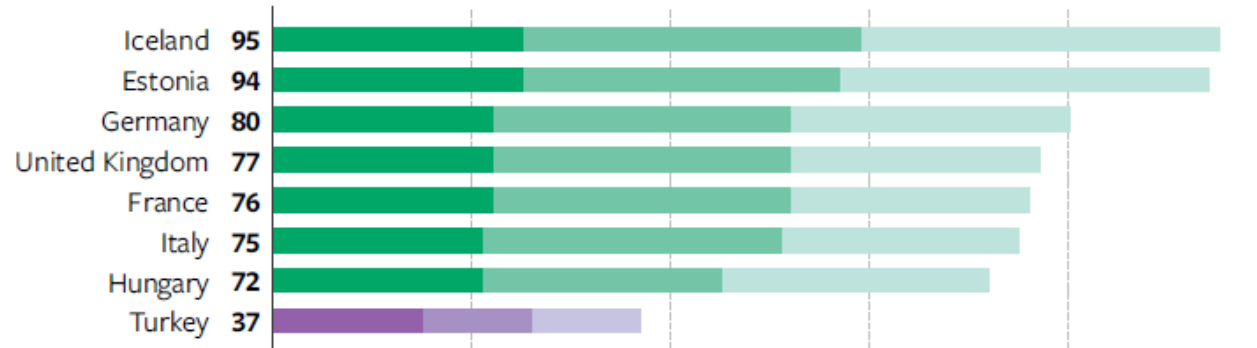


Internet freedom is challenged

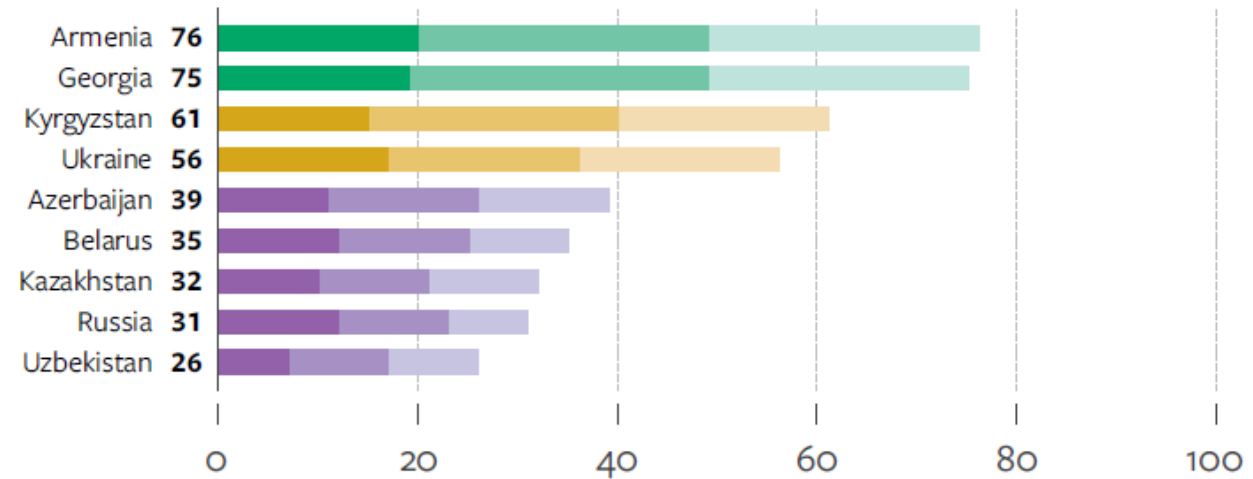
- A. Obstacles to Access
- B. Limits on Content
- C. Violations of User Rights



Europe



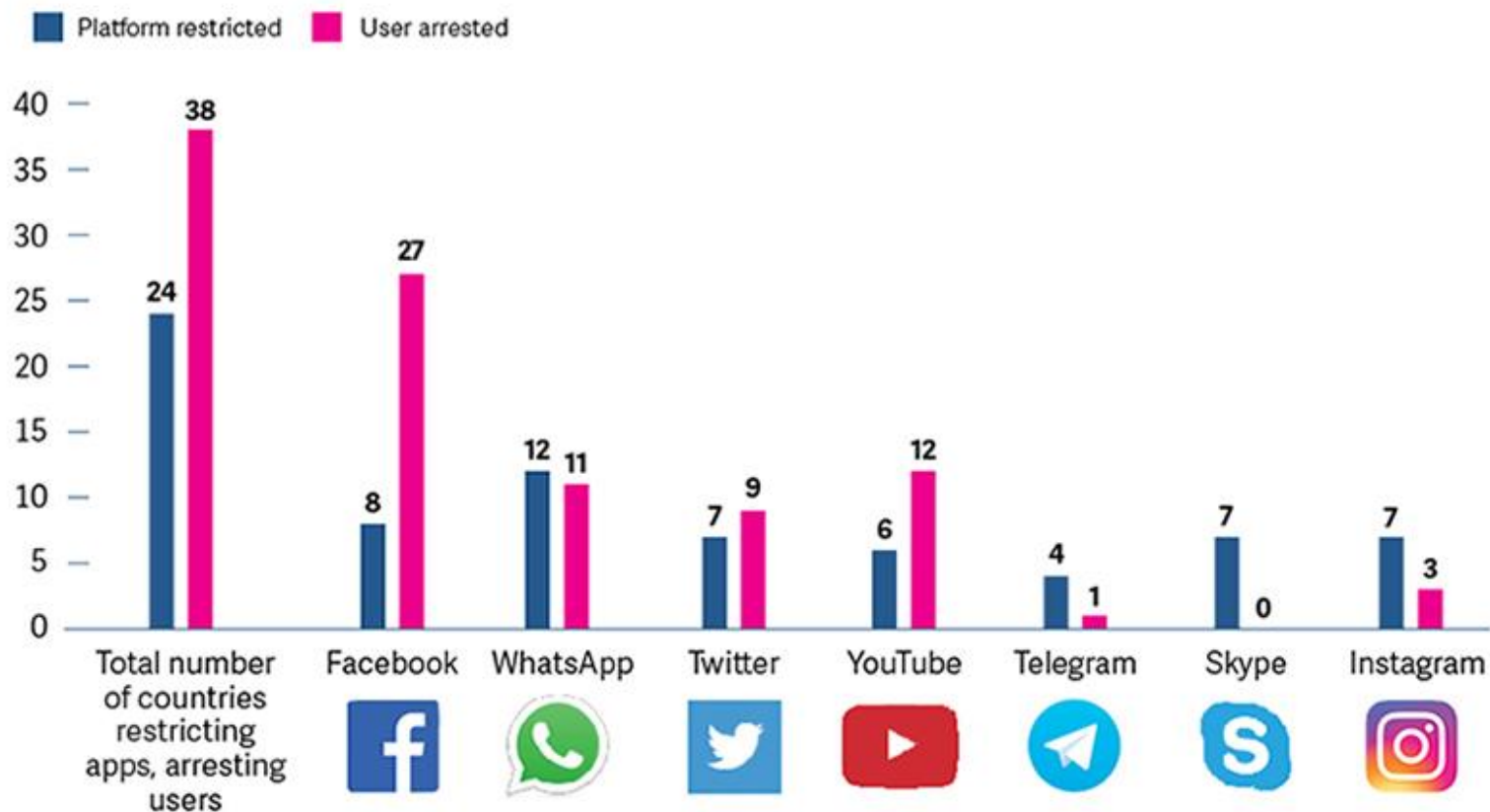
Eurasia



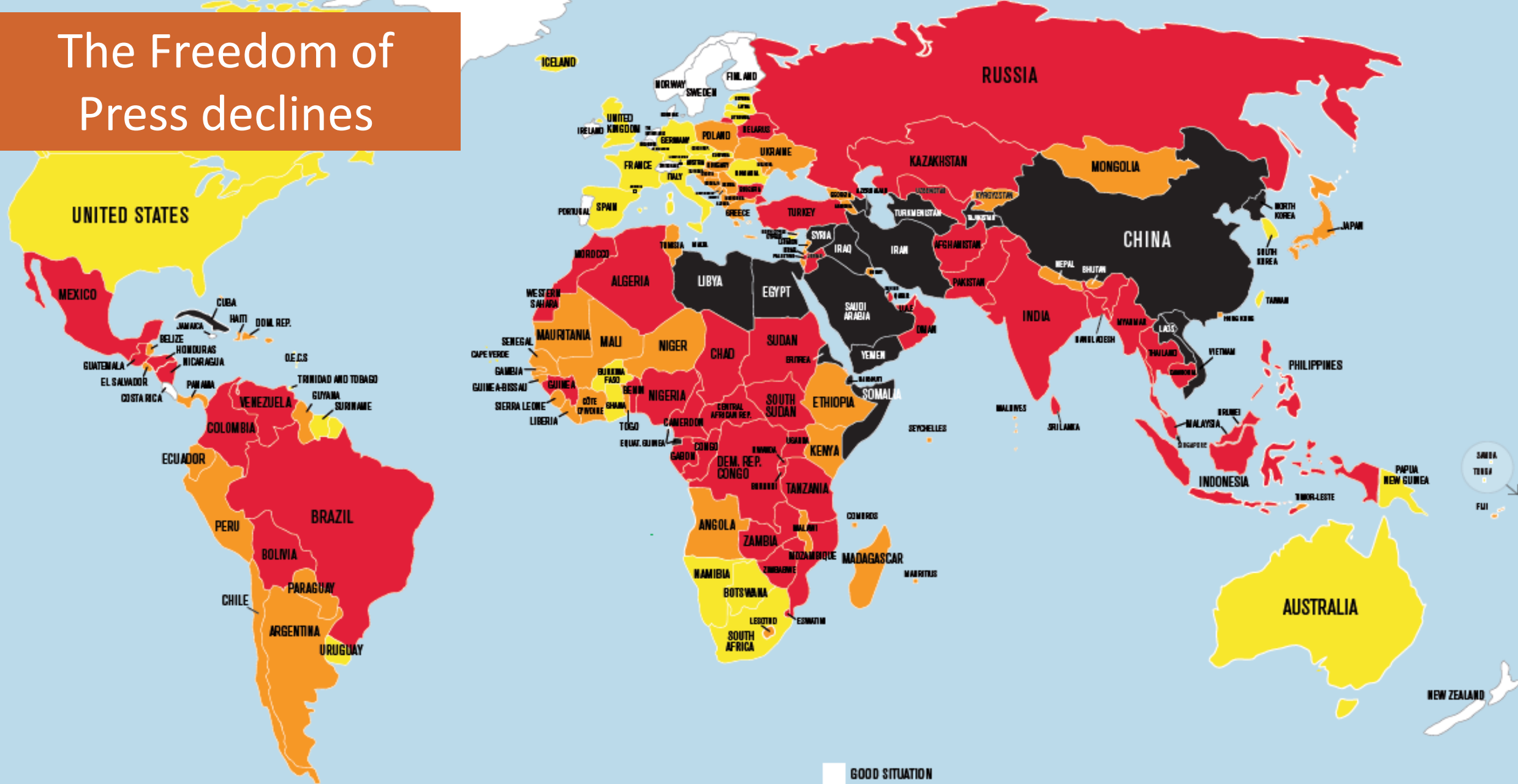
Policing of internet is spreading

NUMBER OF COUNTRIES WHERE POPULAR APPS WERE BLOCKED OR USERS ARRESTED

WhatsApp was blocked more than any other tool, while Facebook users were arrested for posting political, social, or religious content in 27 countries.



The Freedom of Press declines

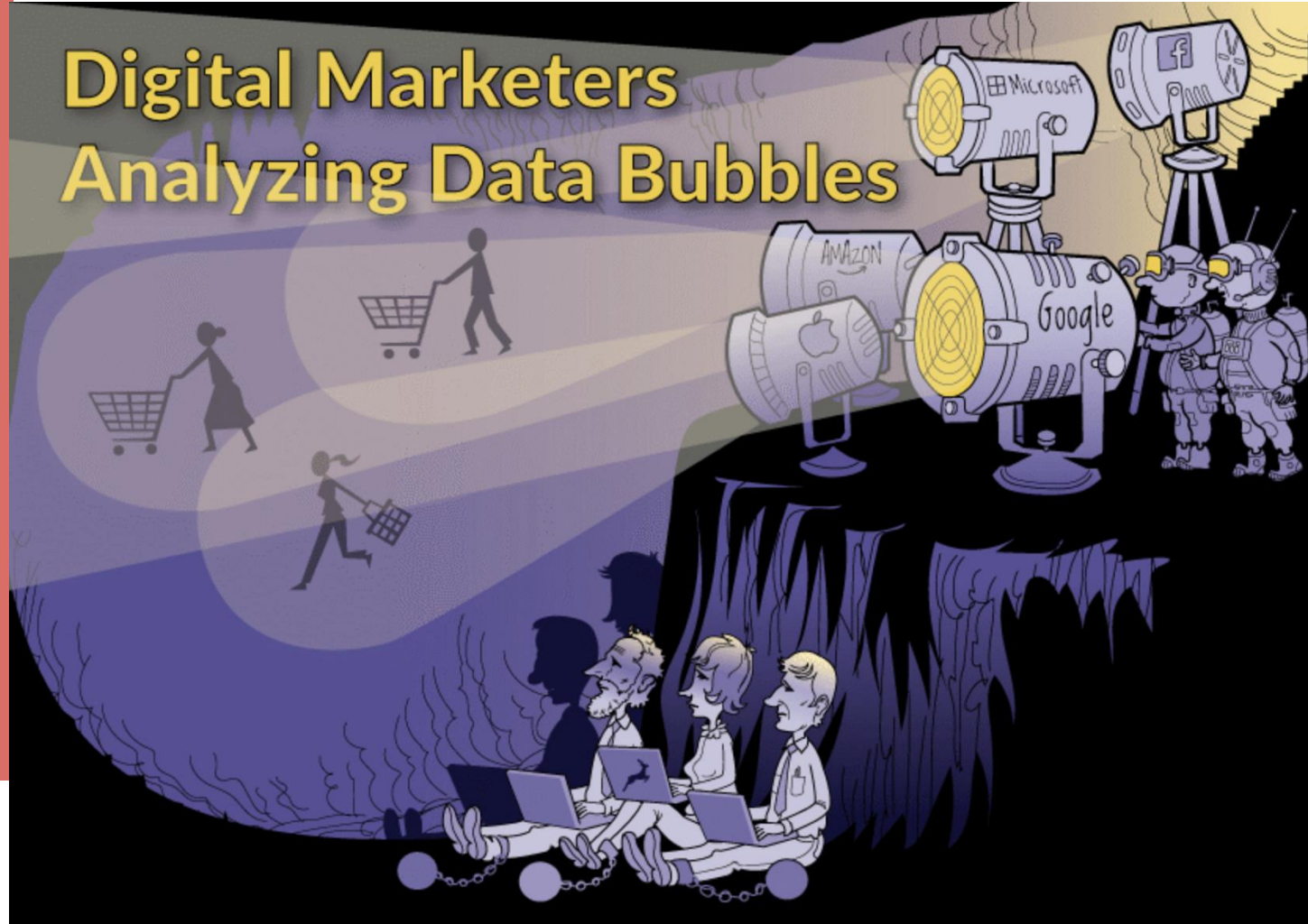


Freedom of the Press Worldwide 2021

Do I still have access to information?



Digital Marketers Analyzing Data Bubbles



Impact on Human Rights

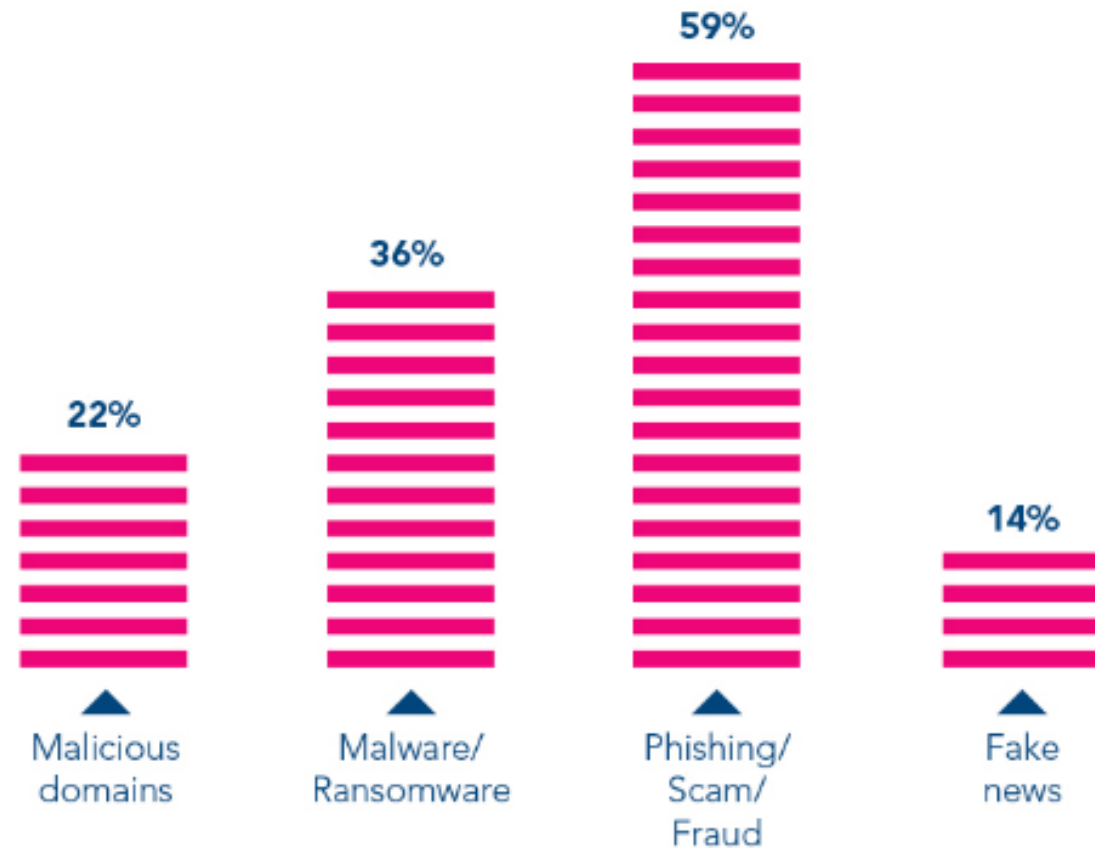
✓ **Cybercrime**

Cybercrime proliferates



COVID-19 increases cyberthreats

Distribution of the key COVID-19 inflicted cyberthreats based on member countries' feedback



Vaccine data are stolen

moderna



- **European Medicines Agency (EMA)** documents on Moderna's COVID-19 vaccine candidate were unlawfully accessed in a cyberattack.
- **The EMA**, had been targeted in a cyberattack, which also gave hackers access to documents related to the development of the Pfizer Inc and BioNTech COVID-19 vaccine.
- **Moderna** said its submission to the EMA did not include any information identifying individual study participants and there is no information at present that any participants had been identified in any way.

Fake vaccine certificates are sold online



Fraudsters sell forged COVID-19 vaccination certificates on the dark web in a fast-growing pandemic scam, cyber security analysts say

Impact on Human Rights

✓ **Discrimination**

I am constantly profiled

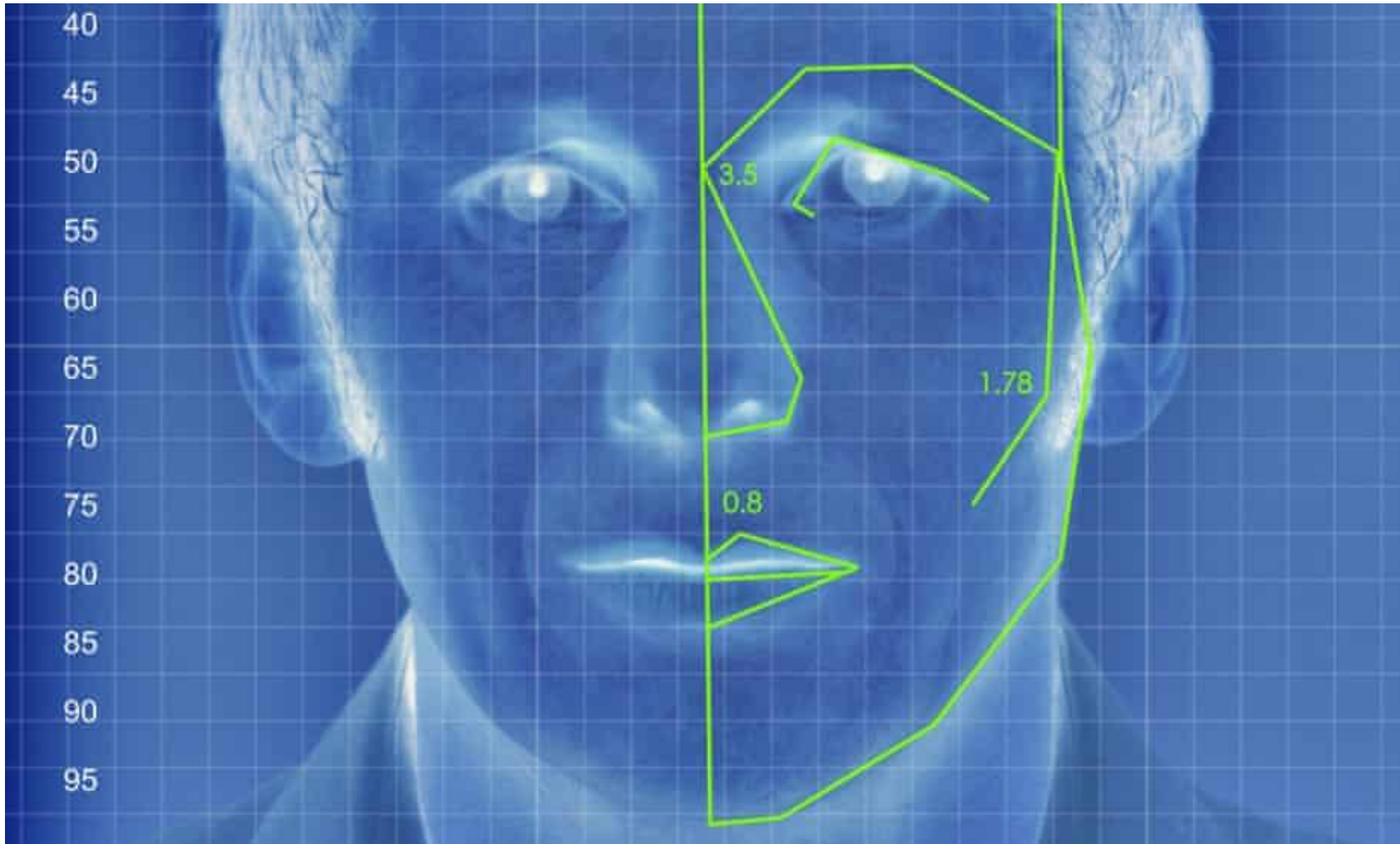


My career depends on AI



The UK companies have used Artificial Intelligence and facial expression technology in the process of job interviews to find the best candidate as per the desired profile.

AI can determine my sexual orientation



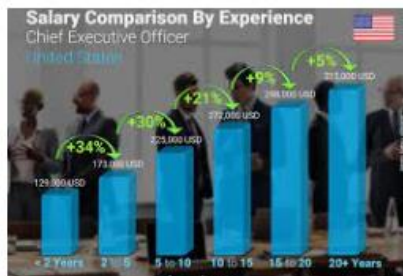
An algorithm deduced the sexuality of people on a dating site with up to 91% accuracy, raising tricky ethical questions

Source: [theguardian.com](https://www.theguardian.com)

Algorithms are often biased



The U.S. President as Chief Executive | HowStuffW...
people.howstuffworks.com



Chief Executive Officer Average Salary in U...
salaryexplorer.com



Chief Executive Officer Average Salary in United S...
salaryexplorer.com



James McAndrews, chief executive
gettyimages.ch

Google images search for “CEO”, just **11 per cent** of the people it displayed were women, even though 27 per cent of the chief executives in the US are female.



Ron Brenneman, president and chief e...
alamyimages.fr



Chief Executive Officer ...
globalpartnership.org



BROWN Zak (usa), Chief Executive Officer...
alamy.com



USA | Comment McDonald's e...
latribunedelhotellerie.com



Jean-Yves Fillion, chief executive office
gettyimages.ch



Fraport USA appoints Mullane as new Chi...



Laurent Rossi (FRA) Alpine Chief Exec...



Alan Murray on the Cost of CEOs Taking a ...



Chief Executive Officer (CEO) – American Academy...

Source: [newscientist.com](https://www.newscientist.com)

Image: [Google search 18 November 2021](#)

Algorithms make regrettable mistakes



The Israeli police arrested a Palestinian worker who had posted a picture of himself on Facebook posing by a bulldozer with the caption “attack them” in Hebrew.

Only he hadn’t: the Arabic for “**good morning**” and “**attack them**” are very similar, and **Facebook’s automatic translation software** chose the wrong one.

Source: [timesofisrael.com](https://www.timesofisrael.com)

What is at risk ?

- ✓ **Right to private and family life**
- ✓ **Freedom of Expression**
- ✓ **Right to participate in democratic processes, such as elections, free from undue influences**

OUR OBJECTIVE

Assist and cooperate with member States to change their policy, legislation and **practice** to effectively protect and promote freedom of expression, media freedom and data protection, in line with Council of Europe standards

TRIANGULAR

Methodology

STANDARDS

Recommendations

Conventions

Projects

Programmes

ASSISTANCE

Surveys

Mechanisms

MONITORING



Safeguarding
**Freedom of
Expression**

Protecting **Privacy**

Combating
Cybercrime

Developing
**Digital
Governance**

Framing
**Artificial
Intelligence**

5
expertise
areas



Cooperation

- ✓ Partnership with Digital Companies
 - 26 companies and associations

Standards

- ✓ Recommendation with regard to **network neutrality**
- ✓ Recommendation on **Internet freedom**
- ✓ Recommendation on the **roles and responsibilities of internet intermediaries**
- ✓ Recommendation on **the impacts of digital technologies on freedom of expression**

Digital Partnership



cooperation
formats

- **participating in the work of committees** and other intergovernmental or expert organs, bodies and structures of the Council of Europe to contribute to the drafting of legally and politically binding standards;
- **co-organising conferences** and other awareness-raising events;
- **providing expertise for Council of Europe studies** and thematic reports (i.e., hearings with experts, brainstorming sessions);
- **receiving Council of Europe expertise** (i.e., training sessions, seminars);
- **joint projects**, targeted partnerships.

DEMOCRATIC PROCESSES AND MICRO-TARGETTING

- New tools aim to provide transparency and integrity to election processes
- E-voting still lacks trust
- More balanced newsfeeds

DATA PROTECTION

- AI requires Big Data
- The risk of bias is embedded in the data used to train algorithms
- Use of Big Data in justice systems poses challenges in terms of equality before the law
- Strengthening the rights of data subjects is necessary



CONTENT MODERATION

- Increasingly performed by AI (99% for Facebook)
- A human-rights based approach to the removal of illegal content is required
- Transparency and fairness of algorithms is necessary

CYBER SECURITY

- AI is sensitive to cyber-threats
- Cyber-security services and education become increasingly important
- Holistic stakeholder forums are needed

Protecting Privacy

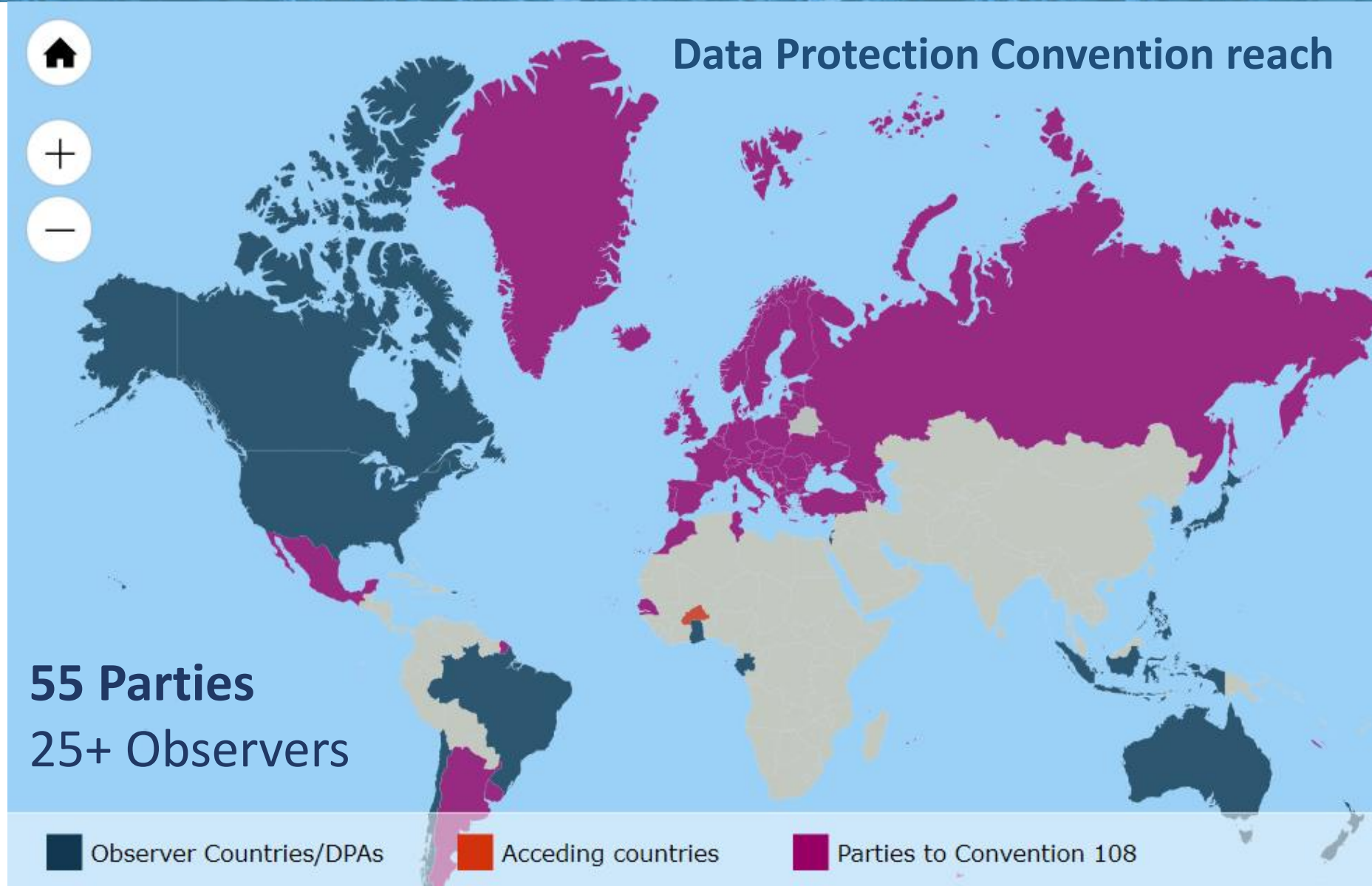
➔ Data Protection Convention

✓ 80 participating countries

➔ Convention Committee

set international standards in areas of:

- Artificial Intelligence
- Big data
- Health related data
- Media and privacy
- Data processing by the police

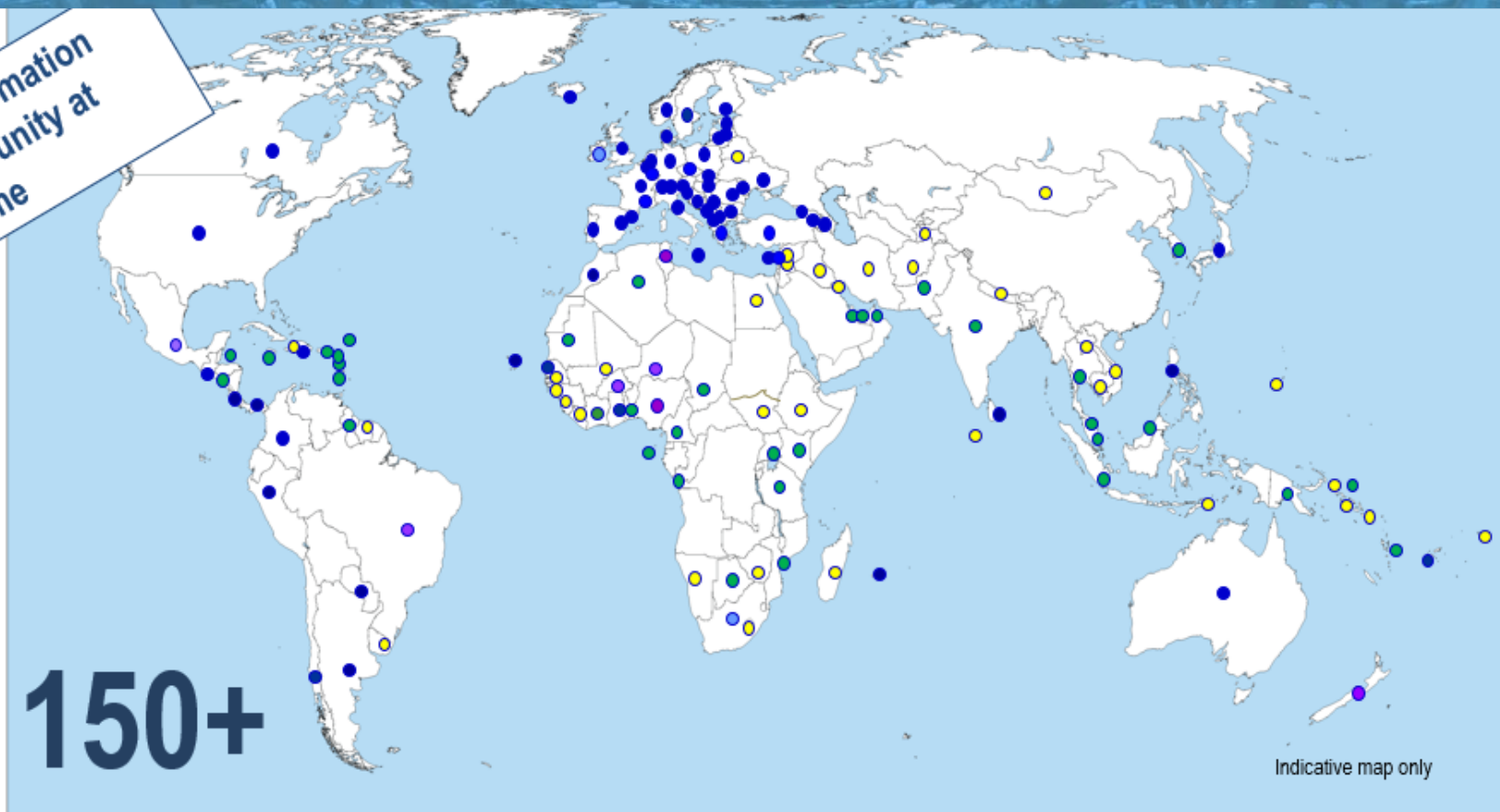


Budapest Convention on Cybercrime

- **A framework for effective cooperation** with the necessary rule of law safeguards available to 66 states parties.
- **An efficient criminal justice response** against cybercrime and other crimes involving electronic evidence.
- **A well established and functioning system** used as a guideline by almost 80% of States worldwide.

Combating Cybercrime

For country-specific information
see the Octopus Community at
www.coe.int/cybercrime



Reach of the Budapest Convention

Parties: 66
Signed: 2
Invited to accede: 9
= 77



Other States with laws largely in line with
Budapest Convention = 20+
Further States drawing on Budapest
Convention for legislation = 50+





Transversal approach:

- ✓ Data processing and human rights
- ✓ **Use of AI by the Judiciary**
- ✓ Criminal law implications of AI
- ✓ **Bioethics and AI**
- ✓ Environment
- ✓ **Education**
- ✓ Gender equality, Youth
- ✓ **Children**, Anti-discrimination
- ✓ Culture, Eurimages
- ✓ **Elections**
- ✓ Freedom of expression



PACE recommendations:

- The role of AI in **policing** and **criminal justice** systems
- Preventing **discrimination** caused by the use of artificial intelligence
- Need of **democratic governance** of AI
- The **brain-computer interface**: new rights or new threats to fundamental freedoms?
- **CEPEJ** - European **Ethical Charter** on the use of artificial intelligence (AI) in **judicial systems** and their environment



Standards

- ✓ Declaration on the manipulative capabilities of algorithmic processes
- ✓ Recommendation on the human rights impacts of algorithmic systems
- ✓ **IN PREPARATION: a legal framework for the development, design and application of artificial intelligence** based on Council of Europe standards

Awareness raising

Study: “Algorithms and Human Rights”

Study: “Responsibility and AI”

CAHAI - Ad hoc Committee on Artificial Intelligence

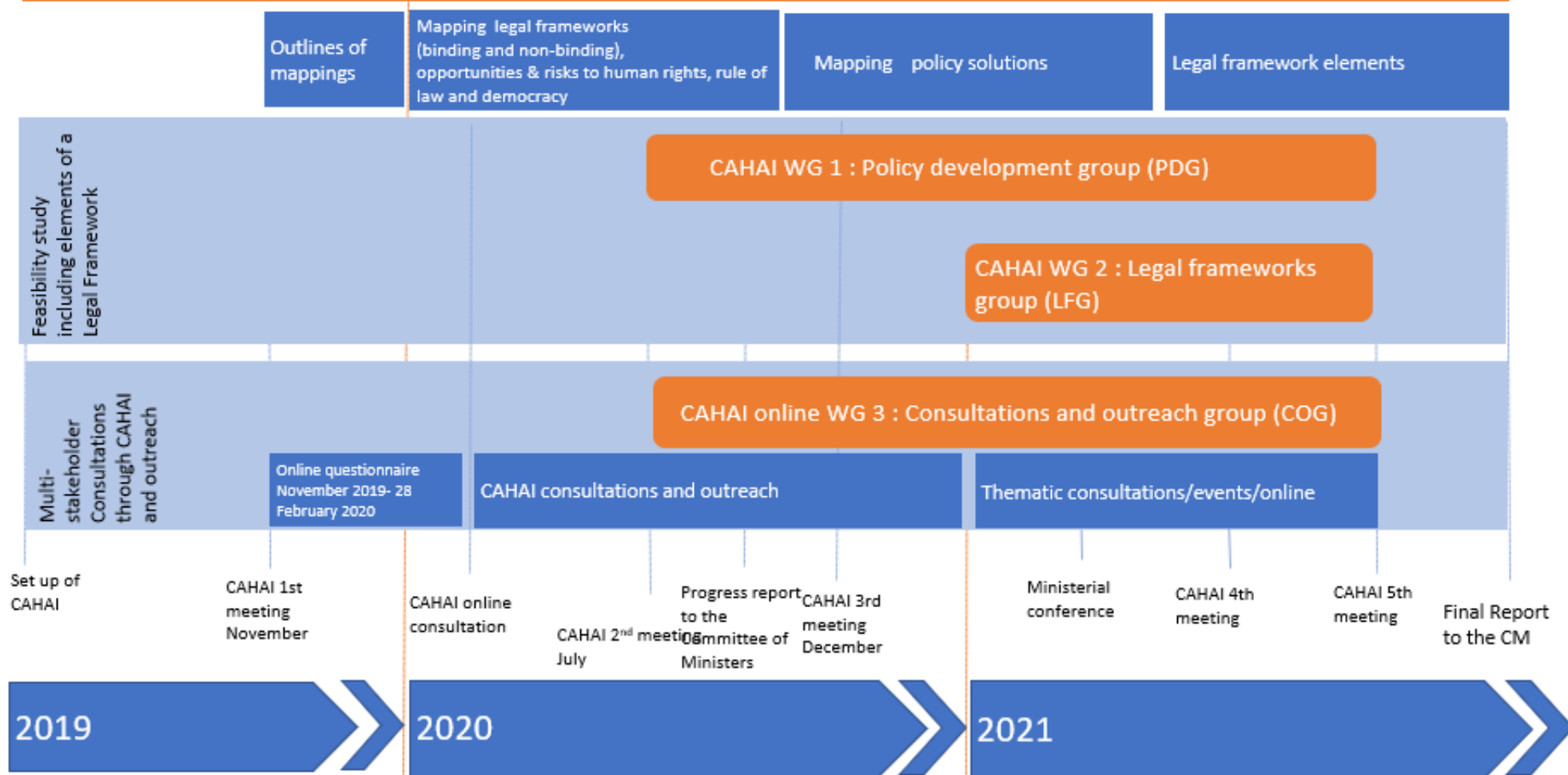
- Identify major opportunities and negative impacts on human rights, democracy and the rule of law.
- Discover gaps in the current level of protection provided by existing international and national instruments.
- Propose an appropriate legal framework consisting of a combination of binding and non-binding legal instruments, that complement each other.
- **Council of Europe** is the organisation that could bring the « brick » of regulation to create trust based on human rights, democracy and the rule of law.

www.coe.int/en/web/artificial-intelligence/cahai



CAHAI – the Roadmap

Key deliverables and proposed roadmap of CAHAI (2019 –2021)





Binding and non-binding legal instruments (standards)

1. Transversal

- [Ongoing] A transversal legal instrument to regulate the design, development and use of artificial intelligence systems - CAI
- [Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems](#) - CM/Rec(2020)1
- [Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes](#) - Decl(13/02/2019)1
- [Unboxing AI: 10 steps to protect human rights](#) - Recommendation of the Commissioner for Human Rights, May 2019
- [Recommendation of the Parliamentary Assembly of the Council of Europe about Technological convergence, artificial intelligence and human rights](#) - Recommendation 2102(2017)





Binding and non-binding legal instruments (standards)

2. Privacy and Data Protection

- [New] [Recommendation of the Committee of Ministers on the protection of individuals with regard to automatic processing of personal data in the context of profiling](#) - CM/Rec(2021)8
- [Guidelines on Facial Recognition](#) - T-PD(2020)03
- [Guidelines on Artificial Intelligence and Data Protection](#) - T-PD(2019)01
- [Guidelines on the protection of individuals with regard to the processing of data in a world of Big Data](#) - T-PD(2017)1

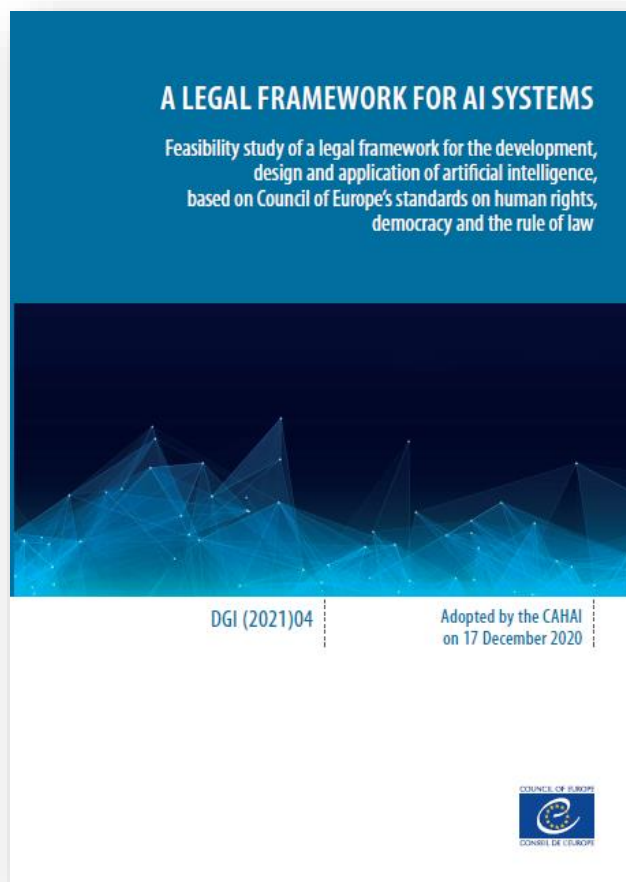




Binding and non-binding legal instruments (standards)

3. Justice and public administration

- [New] [Ongoing] (Until end of 2022) Review of The Administration and You handbook in the light of the use of artificial intelligence (AI) and non-AI algorithmic systems (based on comparative study in member States) – CDCJ
- [New] [Guidelines on electronic court filing \(e-filing\) and digitalisation of courts](#) - CEPEJ(2021)15 (requirements regarding transparency and accountability regarding the court e-filing and decision-supporting systems, and regarding introduction of machine learning based predictive analytics), 9 December 2021
- [Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings](#) - CM(2021)36add4-final (transparency and accountability guidance for the use of AI systems)
- [European Ethical Charter on the use of artificial intelligence \(AI\) in judicial systems and their environment](#) - CEPEJ(2018)14



1. GENERAL **INTRODUCTION**
2. **SCOPE OF APPLICATION** OF A COUNCIL OF EUROPE LEGAL FRAMEWORK ON ARTIFICIAL INTELLIGENCE
3. **OPPORTUNITIES AND RISKS** ARISING FROM THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE ON HUMAN RIGHTS, THE RULE OF LAW AND DEMOCRACY
4. THE COUNCIL OF EUROPE'S **WORK IN THE FIELD OF ARTIFICIAL INTELLIGENCE TO DATE**
5. **MAPPING OF INSTRUMENTS** APPLICABLE TO ARTIFICIAL INTELLIGENCE
6. MAIN CONCLUSIONS OF THE **MULTI-STAKEHOLDER CONSULTATIONS**
7. **MAIN ELEMENTS OF A LEGAL FRAMEWORK** FOR THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE
8. **POSSIBLE OPTIONS** FOR A COUNCIL OF EUROPE **LEGAL FRAMEWORK** FOR THE DESIGN, DEVELOPMENT AND APPLICATION OF ARTIFICIAL INTELLIGENCE BASED ON HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW
9. POSSIBLE PRACTICAL AND FOLLOW-UP **MECHANISMS TO ENSURE COMPLIANCE AND EFFECTIVENESS** OF THE LEGAL FRAMEWORK
10. **FINAL CONSIDERATIONS**

<https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>





No legal vacuum, but ... (see chapters 3 & 5)

- Substantive and procedural **gaps**
- **Uneven protection** levels
- **Uncertainties** affect development and implementation
- **Soft law** approach has major **limitations**

<https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>



Relevant Conventions



European Convention on Human Rights

(1950, Convention for the protection of human rights and fundamental freedoms)

Convention on the Elaboration of a ***European Pharmacopoeia*** (1964)

Convention 108 (108+)

(1981, Convention for the protection of individuals with regard to automatic processing of personal data)

Oviedo Convention

(1997, Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine)

Budapest Convention

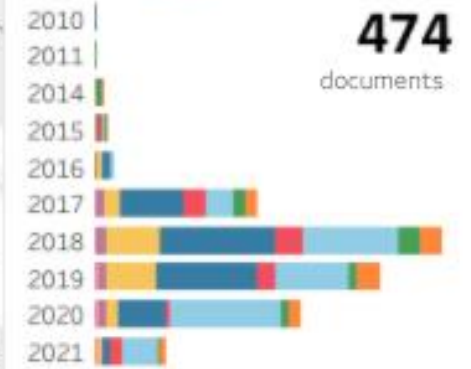
(2001, Convention on cybercrime)



Need for a comprehensive governance framework

- **Use** of technology (risk-based approach)
- Need for clear rules - **predictability**
- Regulation and **innovation**
- **Transboundary** nature of impact
- Cross-border **trade**

AI Initiatives



Think Tank
Professional associ..
Private Sector
National Authorities
Multistakeholder
International Organ..
Civil Society
Academia

Select source(s)

(All)

Editor (Type in your research and press Enter)





Key values, rights and principles

- Human **dignity**
- **Prevention of harm** to human rights, democracy and the rule of law
- Human **freedom** and Human **autonomy**
- **Non-Discrimination, Gender equality, Fairness** and **Diversity**
- **Transparency** and **Explainability** of AI systems
- **Data protection** and the right to **privacy**
- **Accountability** and **responsibility**
- **Democracy**
- **Rule of Law**



Appropriate legal framework

A **combination of binding and non-binding** legal instruments that complement each other.

A binding instrument, a convention or framework convention, of horizontal character, could **consolidate general common principles** – contextualised to apply to the AI environment and using a risk-based approach – and include more granular provisions in line with the rights, principles and obligations identified in this feasibility study.

Any binding document, whatever its shape, should not be overly prescriptive so as to secure its **future-proof** nature. Moreover, it should ensure that **socially beneficial AI innovation can flourish**, all the while **adequately tackling the specific risks** posed by the design, development and application of AI systems.



Possible elements

General

legally binding transversal instrument (+ others at sectoral levels)

risk-based & proportionate

focus on preventing/mitigating risks + promote socially beneficial AI applications

dual use & national security - further consideration needed!

not technical parameters - basic principles&norms for all types of organisations (public&private)

Purpose, scope and definitions

facilitate cooperation and compatibility; sufficient level of abstraction

Fundamental principles

a combination of positive rights of individuals and obligations upon Parties

Risk classification of AI systems and prohibited applications

establishment of methodology for risk classification

prohibited applications (+ review procedures)



Possible elements

General & public sector

applicable provisions
regulatory sandboxes
promote evidence-based public deliberations
prevention of unlawful harm, equal treatment and non-discrimination, gender equality, vulnerable groups, data governance
robustness, safety, cybersecurity, transparency, explainability, auditability, accountability, sustainability
human oversight

Public sector

access to effective remedy
mandatory right to human review of decisions
adequate human review for processes
adequate and effective guarantees against arbitrary and abusive practices

Democracy and democratic governance

risk of unlawful or undue interference in democratic processes
need for respecting the right to freedom of expression, including the freedom to form and hold opinions and to receive and impart political information and ideas, and the right to freedom of assembly and association



Possible elements

Safeguards

informing decisions impacting the legal rights and other significant interests of individuals and legal persons
right to an effective remedy before a national authority (including judicial authorities) against such decisions;
right to be informed about the application of an AI system in the decision-making process; right to choose interaction with a human in addition to or instead of an AI system; right to know that one is interacting with an AI system rather than with a human.
protection of whistle-blowers

Civil liability

Supervisory authorities, compliance, and cooperation

ensure effective compliance with the instrument
establishment of compliance mechanisms and standards
national supervisory authorities
cooperation between Parties and mutual legal and other assistance
“committee of the parties” to support implementation



Additional instruments

HUDERIA (Human rights, democracy, and rule of law impact assessment)

Complementary elements relating to AI in the public sector



Achieving impact through intergovernmental co-operation
on artificial intelligence

About

Key focus areas

AI events calendar

Partners

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Council of Europe



European Commission



European Union Agency for
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Inter-American
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OECD and OECD.AI



United Nations



UNESCO



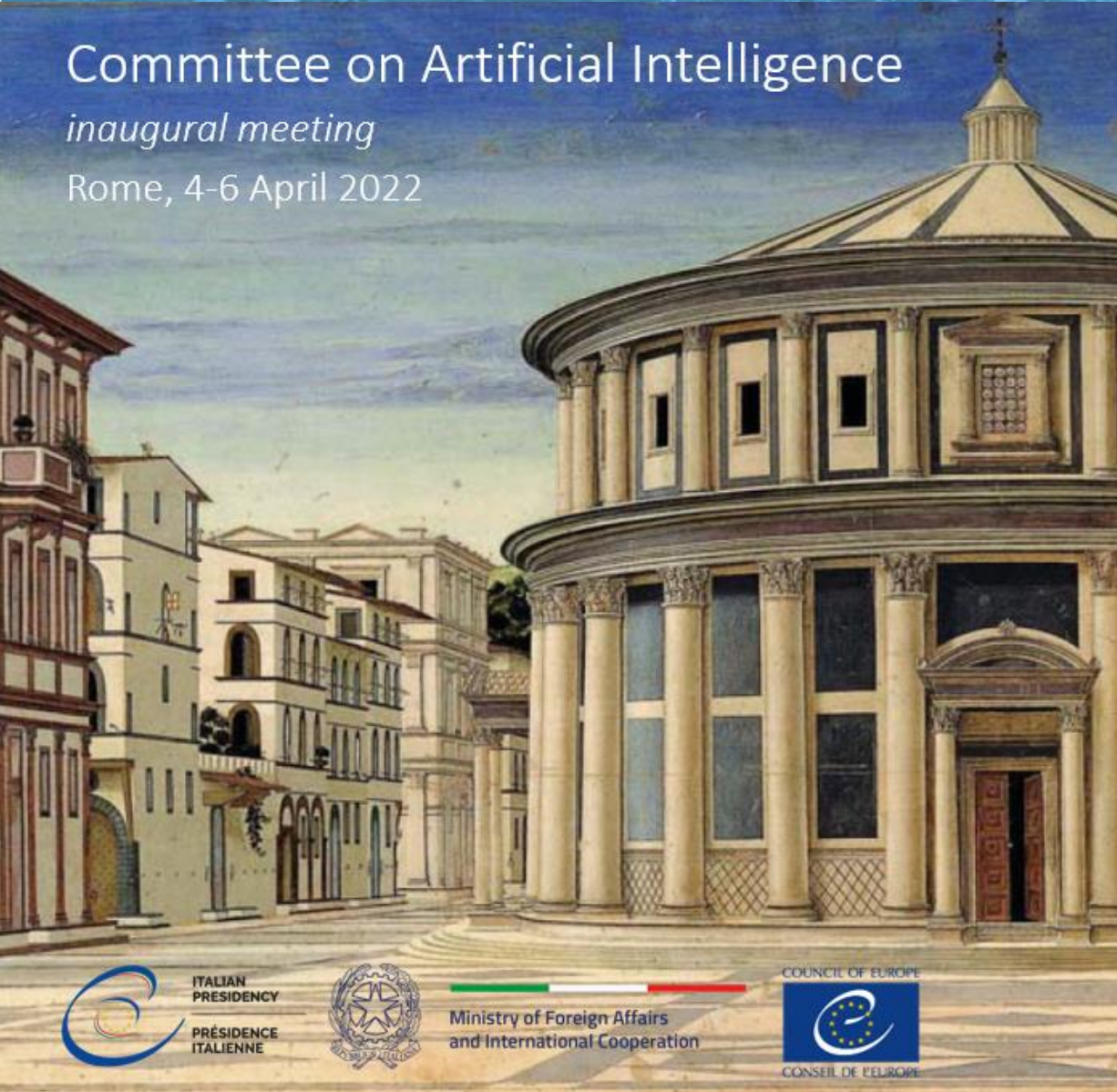
World Bank Group



Committee on Artificial Intelligence

inaugural meeting

Rome, 4-6 April 2022



The CAI established itself (Chair: Mr Thomas Schneider, Switzerland; Vice-Chair: Mr Gregor Stojin (Slovenia))

The CAI examined an outline of a possible legal instrument based on the outcomes of the work of the CAHAI

The CAI unanimously recommended to CM that “appropriate instrument” should be a convention

The CAI prepared to start negotiations in September 2022 on the basis of a proposal for an instrument by the Chair

Perspective

2020 ... need for regulation of AI was established

2021 ... key elements of regulation were elaborated

2022... launch of negotiations in CAI

By 15 November **2023** ... finalisation of draft legal instrument

Thanks for your
attention !



further resources:

www.coe.int/freedomofexpression

www.coe.int/internetgovernance

www.coe.int/dataprotection

www.coe.int/cybercrime

www.coe.int/AI

Facebook Page

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