
OPICE Blum Academy

Digital Law, Technology and Data Protection Congress

# Digital rights in a rapidly changing environment

Presentation

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Head of the Information Society Department

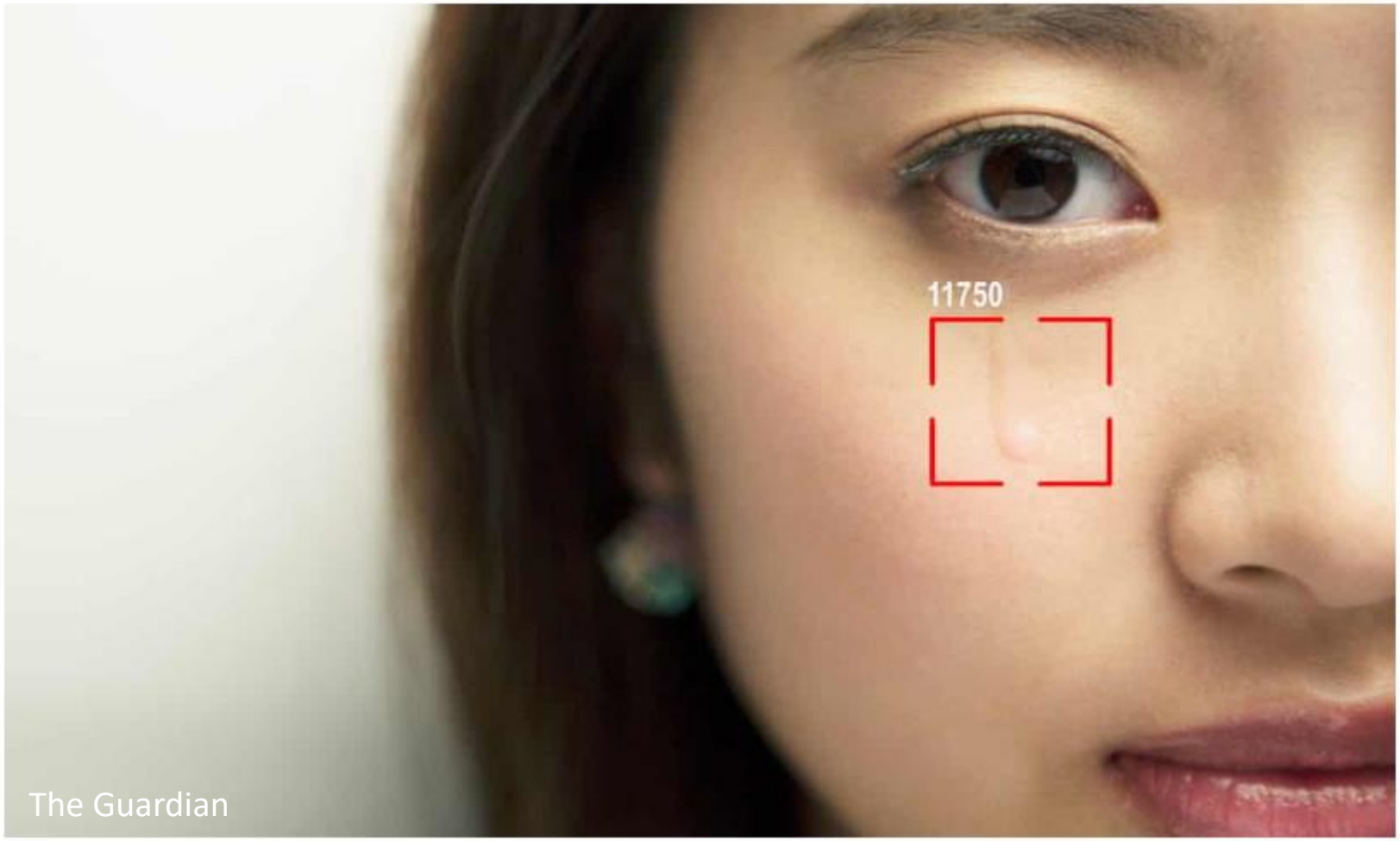
# My personal data are public

# Personal data are not protected

## Almost entire population of Ecuador had data leaked !

# Machines are smart

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




The Guardian

# 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

# My face is recognised

## A database of 7.5m faces from 87 countries

The Guardian

▲ Visitors check their phones behind the screen advertising facial recognition software during Global Mobile

As with most machine learning applications, progress in emotion detection depends on accessing more high-quality data.

# Police monitors me everywhere


**The Metropolitan Police has announced it will use live facial recognition cameras operationally for the first time on London streets.**

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# I am constantly profiled…

# I like my phone


Who does not use a smartphone ?

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# My phone spies on me


Accelerometer
Gyroscope
Magnetometer
Barometer
Proximity
Light sensor
Touch screen

GPS
WiFi
Bluetooth
GSM/CDMA Cell
NFC: Near Field
Camera (front)
Camera (back)

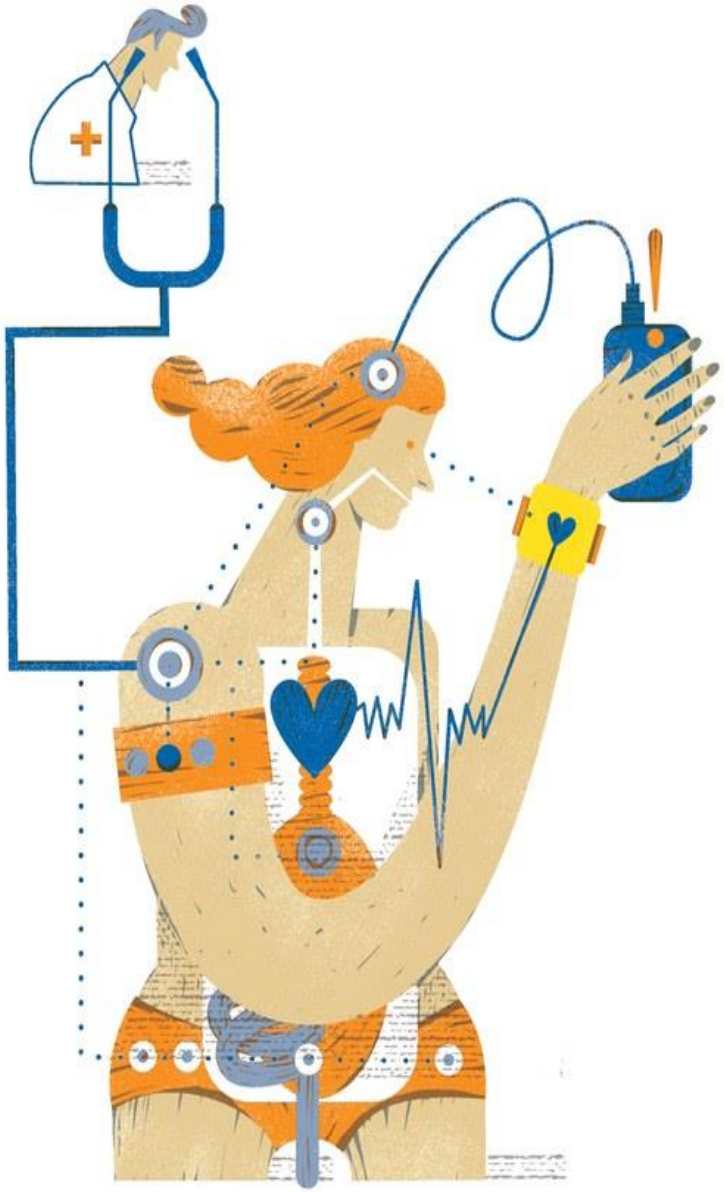
Source: Internet

**14 sensors!**

# Phones talk to each other


I am always connected
Asier

# AI monitors my health



**Medical wearables:**
will your doctor soon prescribe a fit bit ?

# AI selects my content

## Twitter hides Trump tweet for 'glorifying violence'

29 May 2020 Share


Source: BBC

# AI selects my content

## FACEBOOK Transparency Report

**NUDITY**
21 million removals
**99,8% by AI**

**HATE SPEECH**
2,5 million removals
**38% by AI**

**TERRORIST CONTENT**
1,9 million removals
**99,5% by AI**

**GRAPHIC VIOLENCE**
3,4 million removals
**85,6% by AI**

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# AI influences my opinion

# AI meets human beings


**Sofia, a humanoid robot, gives interviews, increasing policy and consumer attention towards AI**

**Saudi Arabia has become the first country to give a robot, Sofia, citizenship** (Independent)

**Estonia considers legalising Artificial Intelligence** (Medium)

**OECD assesses how governments should regulate AI** (The Conversation)

**"Law requires reshaping as AI and robotics alter employment"** (International Bar Association)

**Predictive policing was secretly tested in New Orleans** (The Verge)

**"Academia must step up and educate lawmakers on regulating algorithms!"** (New York Times)

**"Everything we teach should be different from machines"** (Jack Ma)

# AI makes decisions

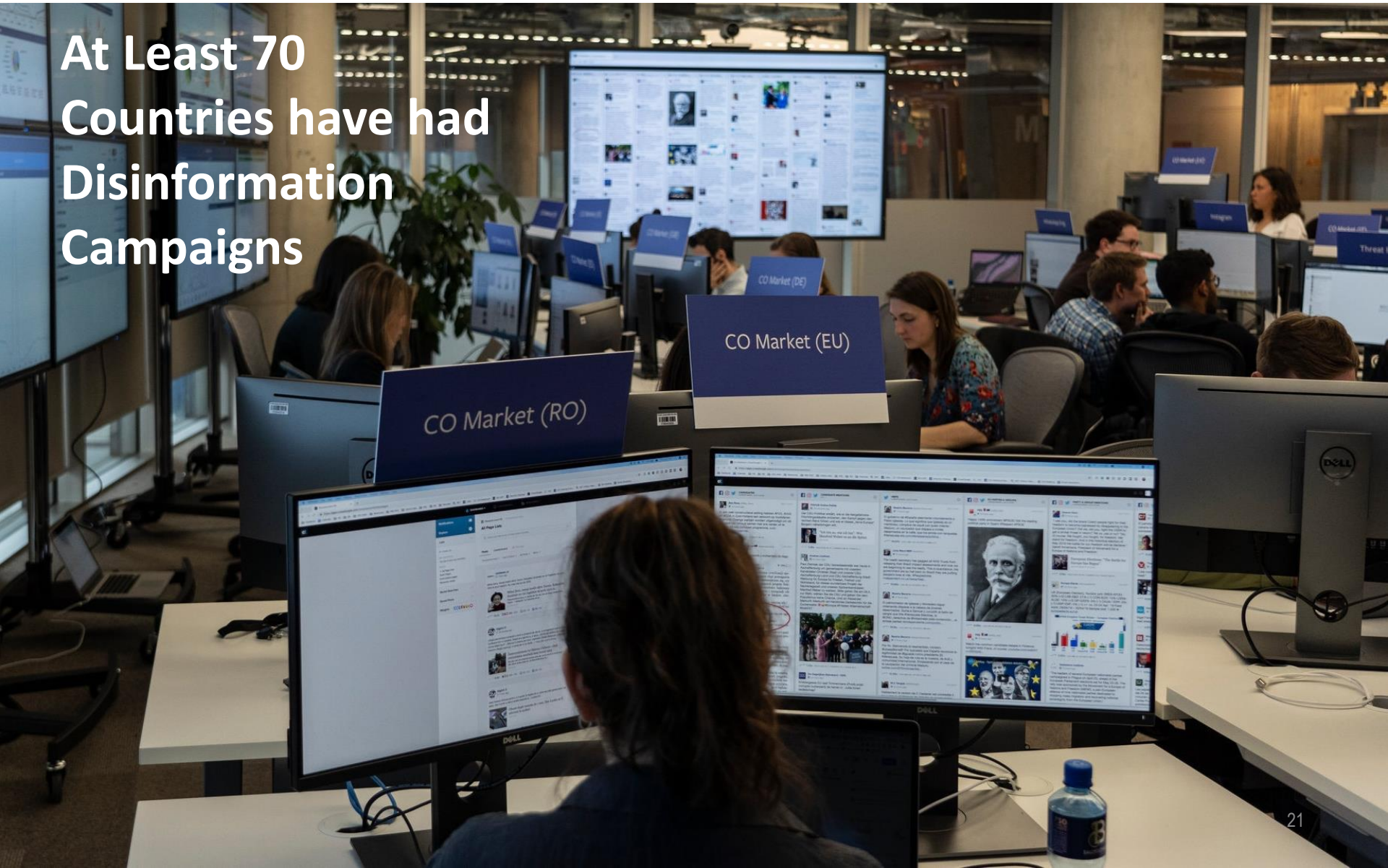
# AI threatens human jobs

## Microsoft sacks journalists to replace them with robots


Source: theguardian

# Fake news invade my space…

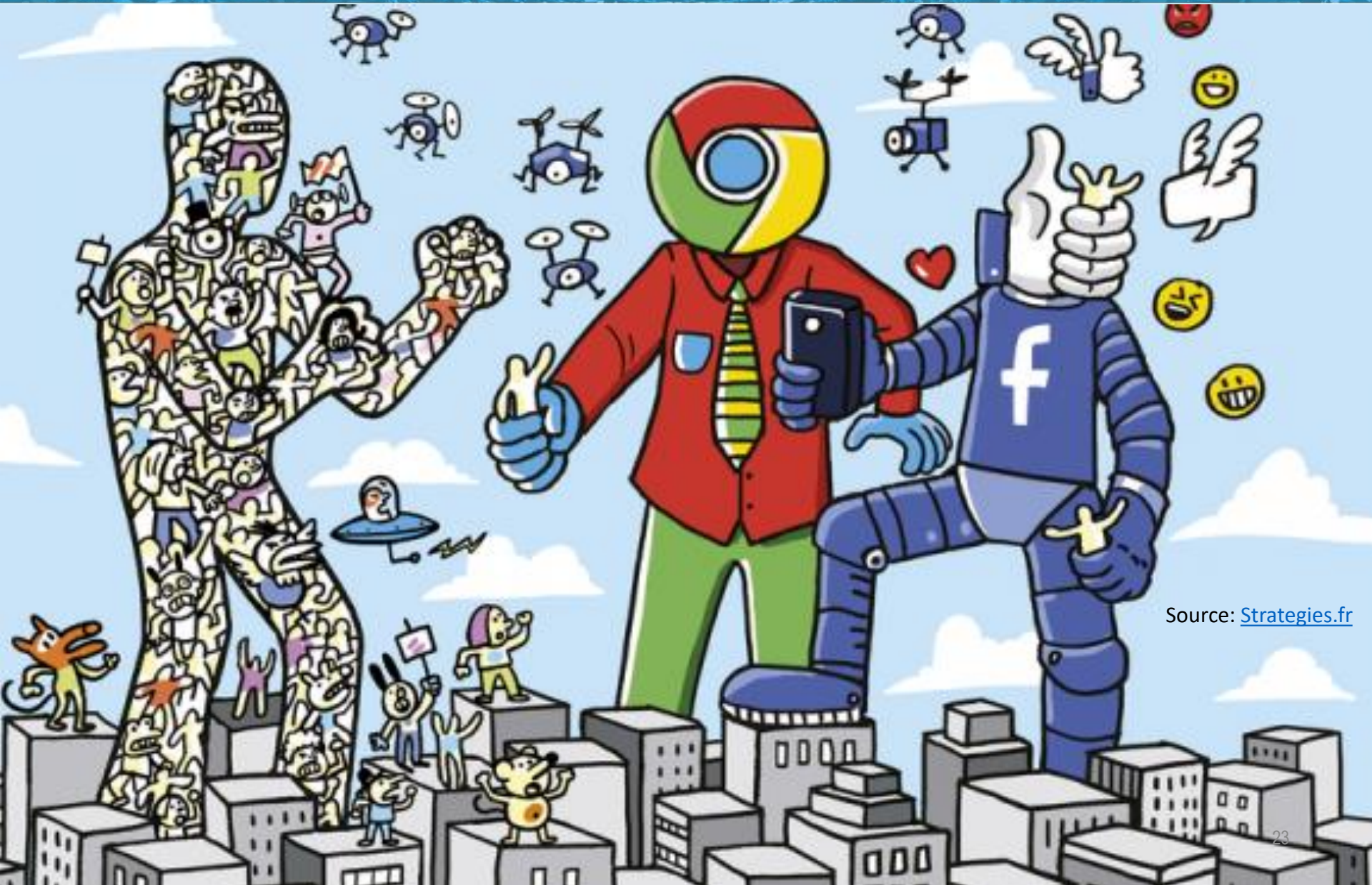
# I am flooded by disinformation




**At Least 70 Countries have had Disinformation Campaigns**

# Deep fakes distort reality

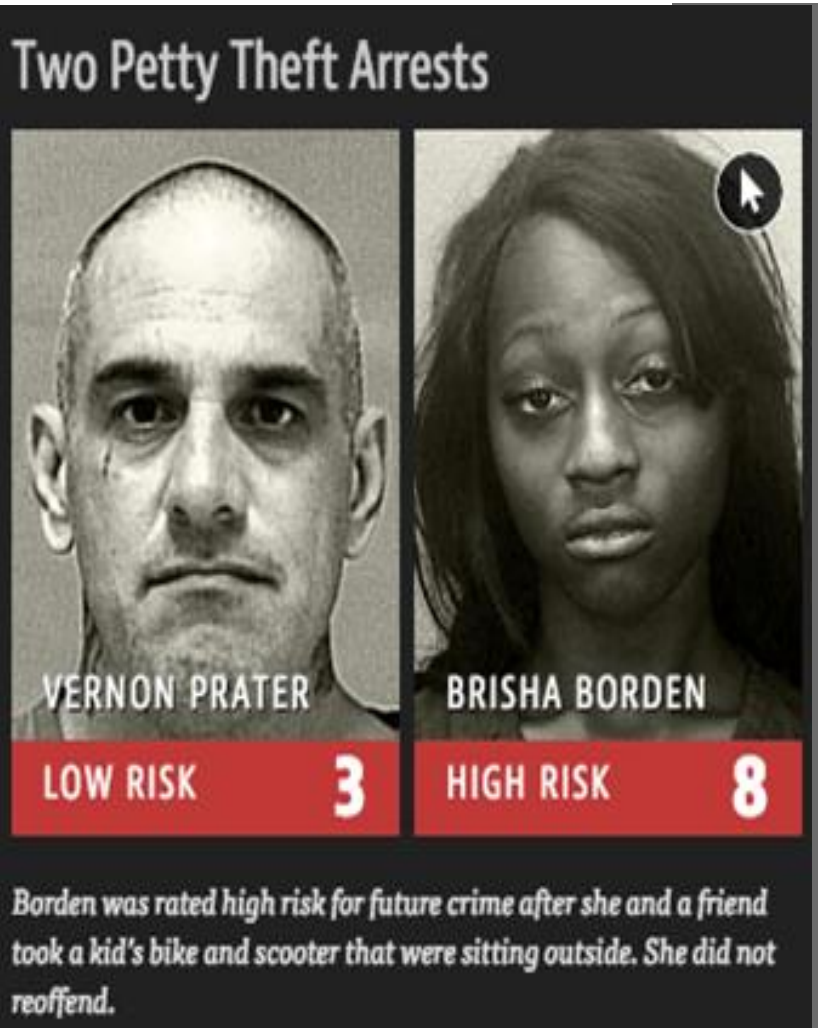
# My data are treated as commodity



Source: Strategies.fr

# Applications impact my rights

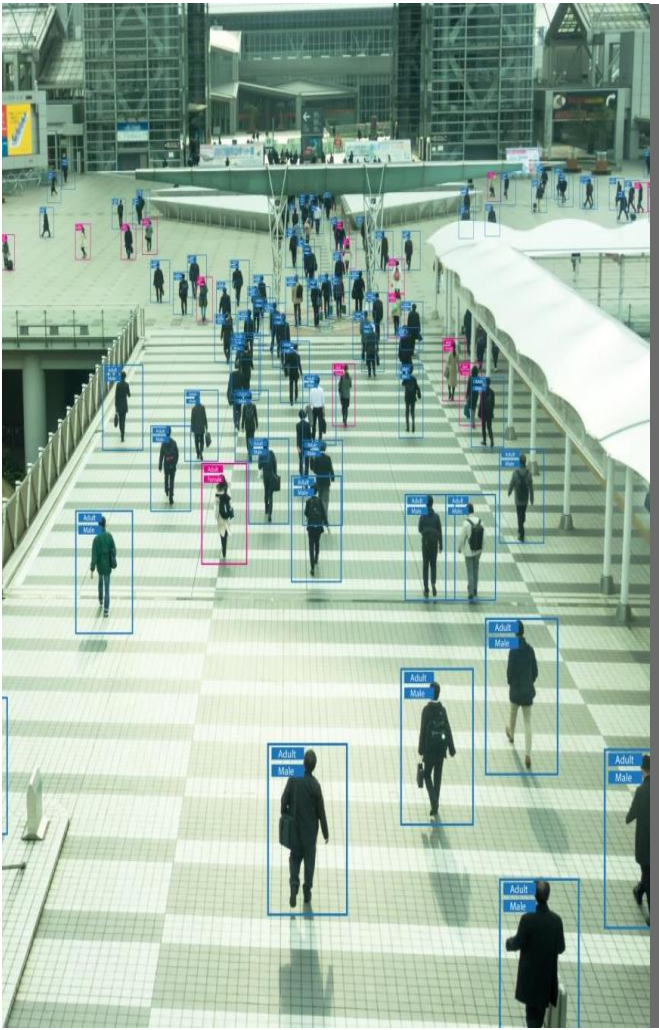
**Articles 5 & 6 of the ECHR:**
Right to liberty and security, Right to a fair trial




| | |
|---|---|
| **Predictive policing** → | Risk of strengthened discrimination |
| **Risk-assessment tools in criminal matters** → | Discrimination, resurgence of determinism and lack of an individualised approach to sentencing, breach of equality of arms… |
| **Predictive justice** → | Risks of undermining judicial impartiality |

# Applications impact my rights

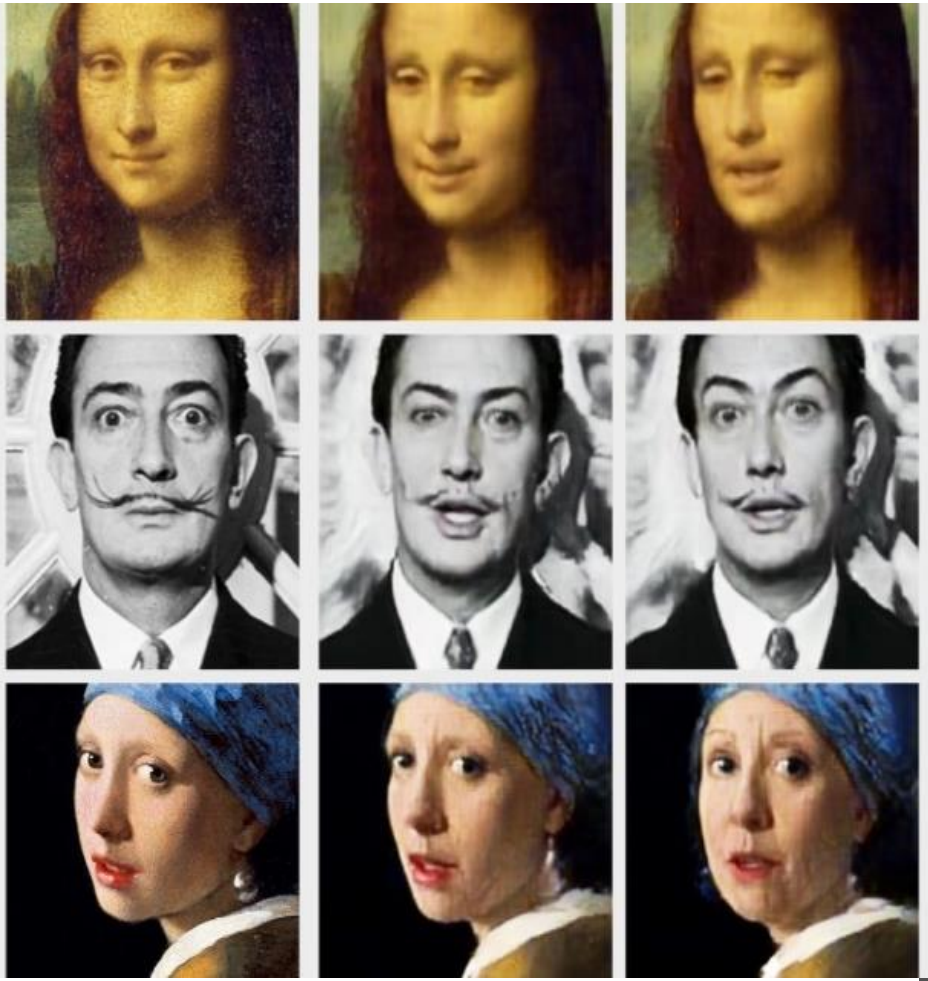
**Article 8 of the ECHR:** Respect for private and family life, residence and correspondence



| | |
|---|---|
| **AI-driven mass surveillance** | Chilling effect<br>Link with other freedoms: religion, expression & association |
| **"Emotion detection" for employment, security and education** | Lacks scientific basis but employed in areas related to individual self-development (education, employment) |
| **Processing of biometric data** | Under the GDPR, for identification but not for categorisation nor profiling |

# Applications impact my rights

**Article 10 of the ECHR:** Freedom of expression

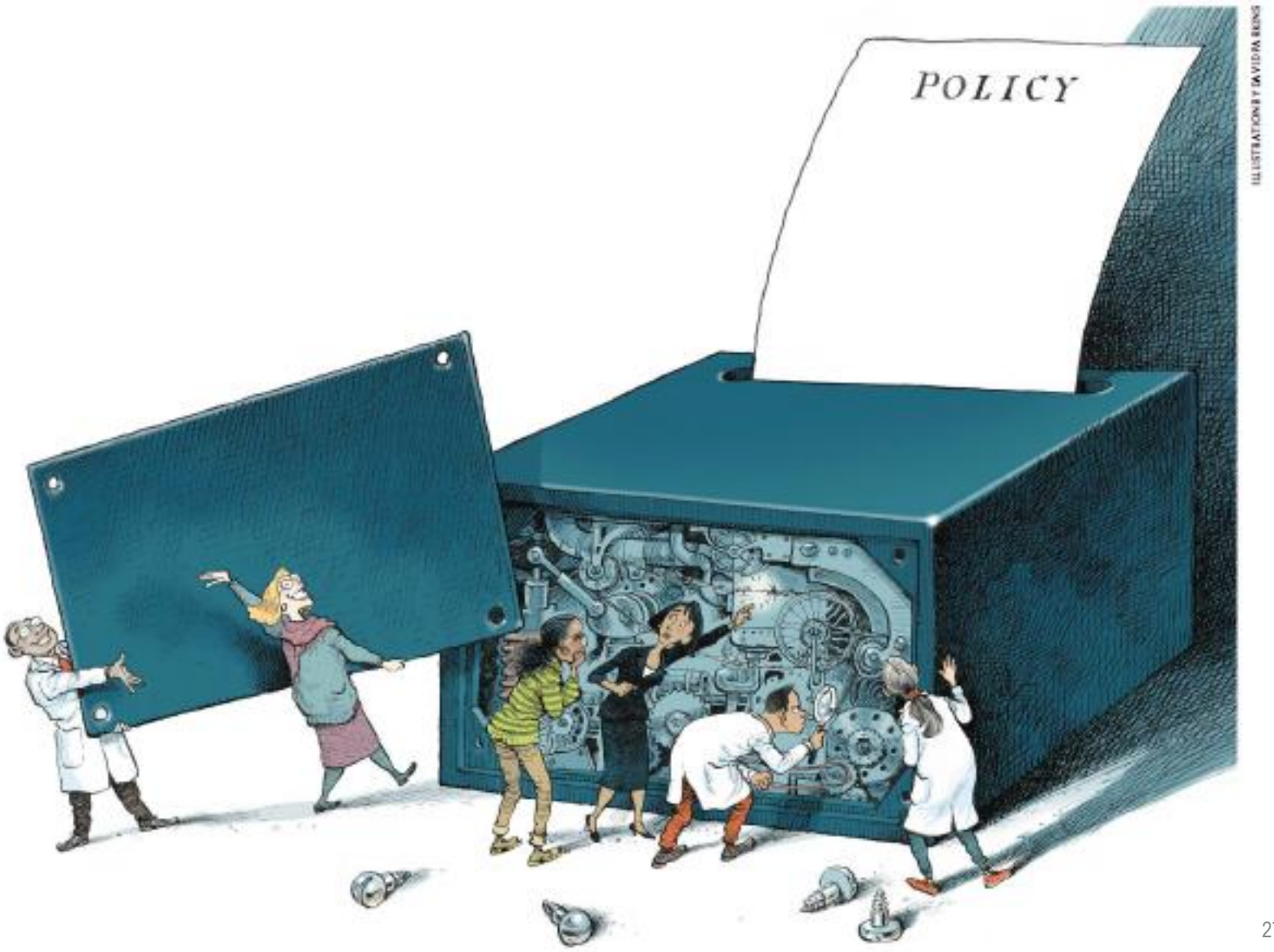


Content selection and "filter bubbles"

"Deep fakes"

Removal of extremist content

# Values and uncertainty collide



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# The future is uncertain

**Artificial intelligence, quantum computing, 5G** and the rise of the **Internet of Things** are just some of the **emerging technologies** that could aid cybercriminals in ways that could make them more dangerous than ever – and **law enforcement must innovate** quickly in order to help keep citizens safe.

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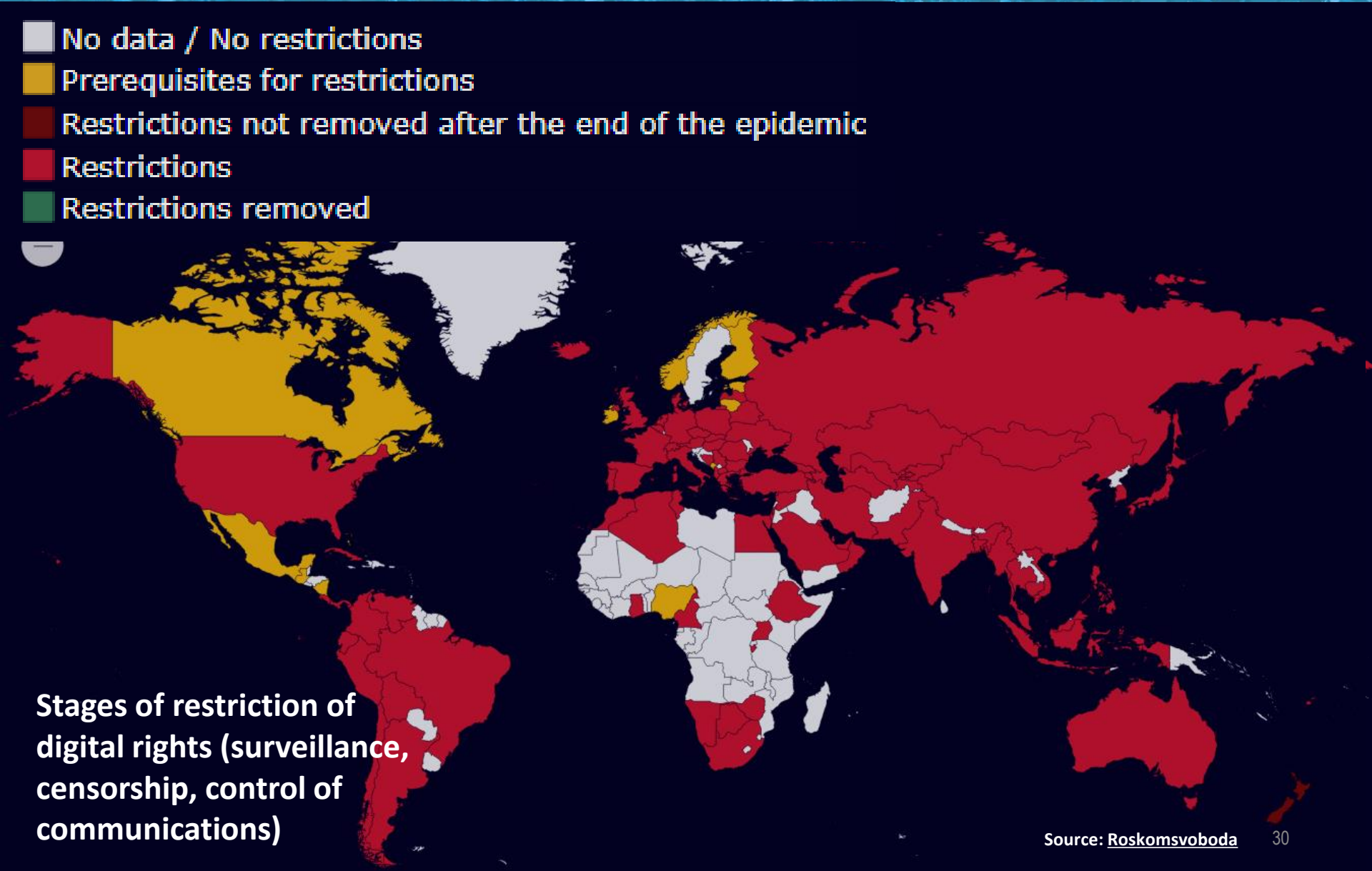
# Pandemic strikes the world

# Pandemic feeds the Big Brother




**Stages of restriction of digital rights (surveillance, censorship, control of communications)**

Source: Roskomsvoboda

# COVID impacts digital rights

**Contact Tracing Apps** are being used in 28 countries

**Alternative digital tracking measures** are active in 35 countries

**Physical surveillance technologies** are in use in 11 countries

**COVID-19-related censorship** has been imposed by 18 governments

**Internet shutdowns** continue in 3 countries despite the outbreak

**There are currently 47 contact tracing apps** available globally

India's Aarogya Setu is the most popular, with 50 million downloads

23% of apps have no privacy policy

Source: TOP10VPN

# Mobile tracing is intrusive


**Major risk: growth in surveillance may be hard to scale back after pandemic, most of the measures do not have sunset clauses.**

**Coronavirus crisis has led to billions of people around the world facing enhanced monitoring.**

Governments in many countries are employing vast programmes for mobile data tracking, apps to record personal contact with others, CCTV networks equipped with facial recognition, permission schemes to go outside and drones to enforce social isolation regimes.

- **In China**, hundreds of millions have installed mandatory "health code" apps that determine whether users– given colour-coded designations of green, yellow, or red (for confirmed Covid-19 patients) – can travel or leave home.
- **In Europe**, some of the world's most privacy-conscious governments are collecting telecom data, employing drones and copying contact-tracing apps pioneered in Asia.
- **Moscow**, a city of 12 million people, requires citizens to have QR codes for travel on its streets and is seeking to employ its 100,000 surveillance cameras and facial recognition technology to enforce self-isolation schemes.



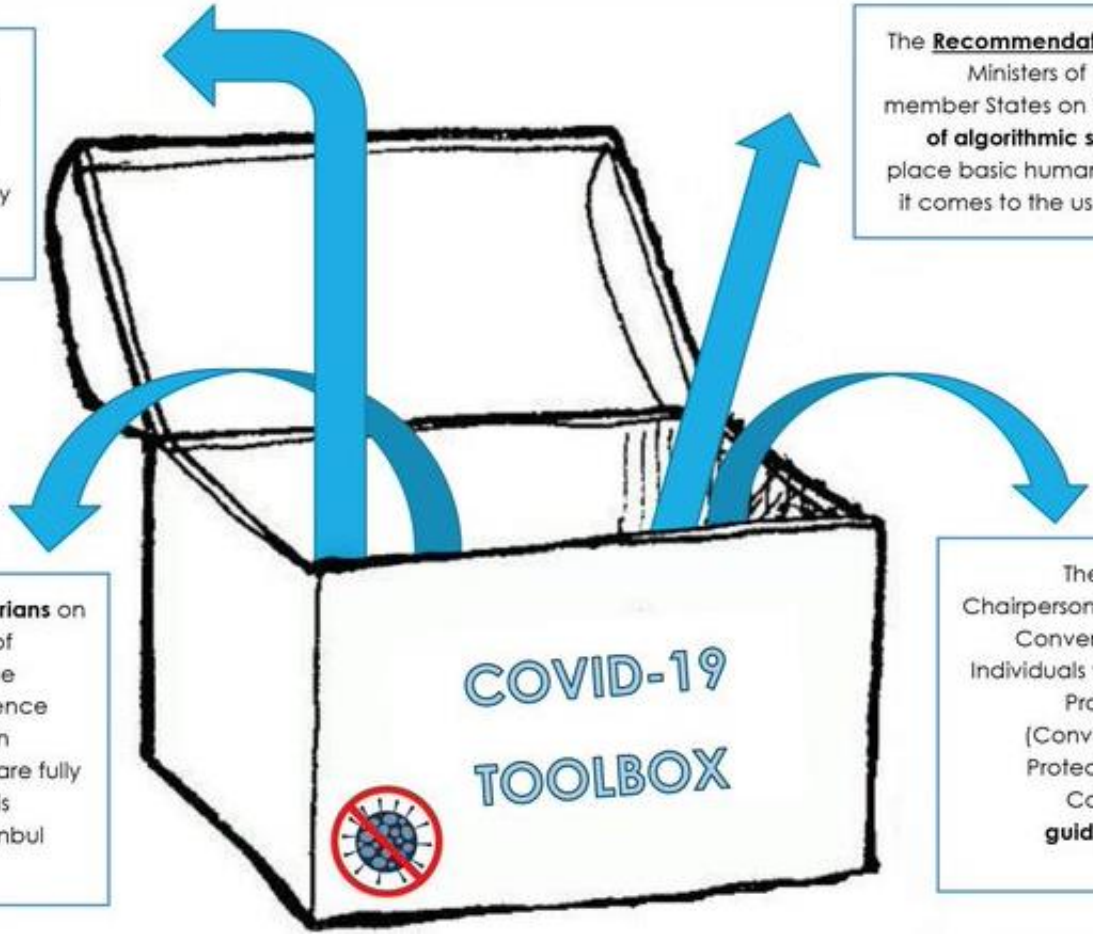
Source: The Guardian

# Guidance during sanitary crisis

## AN OPEN-ENDED COUNCIL OF EUROPE TOOLBOX TO ADDRESS THE CHALLENGES POSED BY COVID-19 PANDEMIC

**The information document of the Secretary General of the Council of Europe** provides guidance and advice to member States on respecting human rights, democracy and the rule of law during the COVID-19 crisis.

The **Recommendation** of the Committee of Ministers of the Council of Europe to member States on the **human rights impact of algorithmic systems** will help us put in place basic human rights safeguards when it comes to the use of algorithmic systems.




The new **Handbook for parliamentarians** on the Council of Europe Convention of Preventing and Combating Violence against Women and Domestic Violence (**Istanbul Convention**) can assist us in securing that women and children are fully protected during the COVID-19 crisis according the standards of the Istanbul Convention.

The **Joint Declaration** by the Chairperson of the Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) and the Data Protection Commissioner of the Council of Europe, contains **guidance on track-and-trace applications.**

# Guidance during sanitary crisis

## Guidance to governments on respecting human rights, democracy and the rule of law

- **Derogation from the European Convention** on Human Rights in times of emergency
- **Respect for the rule of law** and democratic principles in times of emergency, including limits on the scope and duration of emergency measures
- **Fundamental human rights standards** including freedom of expression, privacy and data protection, protection of vulnerable groups from discrimination and the right to education
- **Protection from crime** and the protection of victims of crime, in particular regarding gender-based violence.

Source: Council of Europe, Secretary General

# Protecting human rights

## Commissioner for Human Rights: coronavirus concerns are not carte blanche to snoop

- ✓ **Digital devices** must be designed and used in compliance with privacy and non-discrimination norms.
- ✓ **Laws** must comply strictly with the right to privacy as protected by the laws of national constitutions and of the European Court of Human Rights.
- ✓ **Government operations** must be subject to judicial review, as well as monitoring by parliament and national human rights institutions to ensure accountability.
- ✓ **Independent data protection authorities** must test and approve technological devices before they are used.

Source: HR Commissioner, Opinion Articles, published on DW

# Protecting privacy


## COVID pandemic

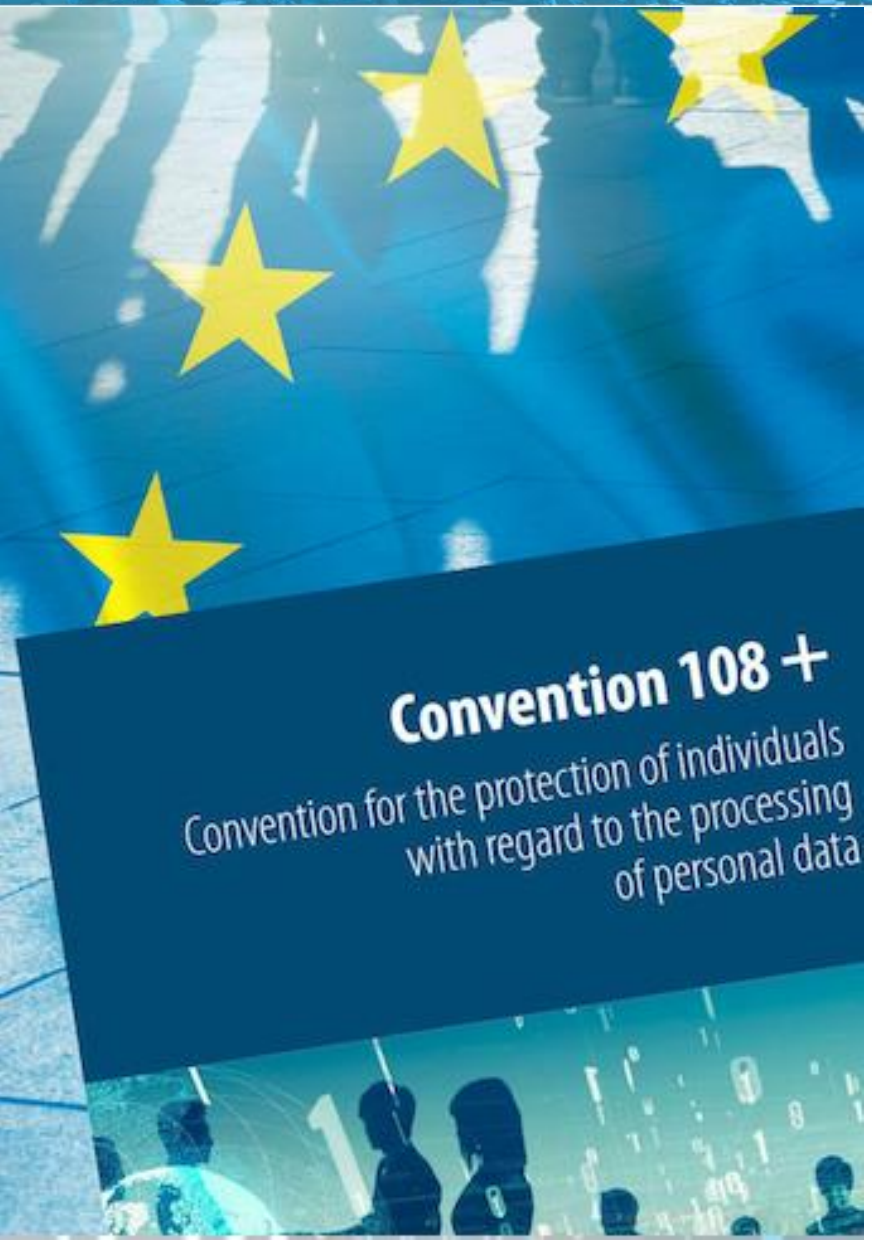
**Joint declarations by the Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe:**

- **On the right to data protection in the context of the COVID-19 pandemic:** States must only take temporary measures that are necessary and proportionate to the legitimate.
- **on Digital Contact Tracing**: Large-scale personal data processing can only be performed when the potential public health benefits of such digital epidemic surveillance override the benefits of other alternative solutions which would be less intrusive.

# Information Society Department

- Data Protection
- Action against Cybercrime
- Artificial Intelligence
- Media Freedom
- Cooperation with Companies

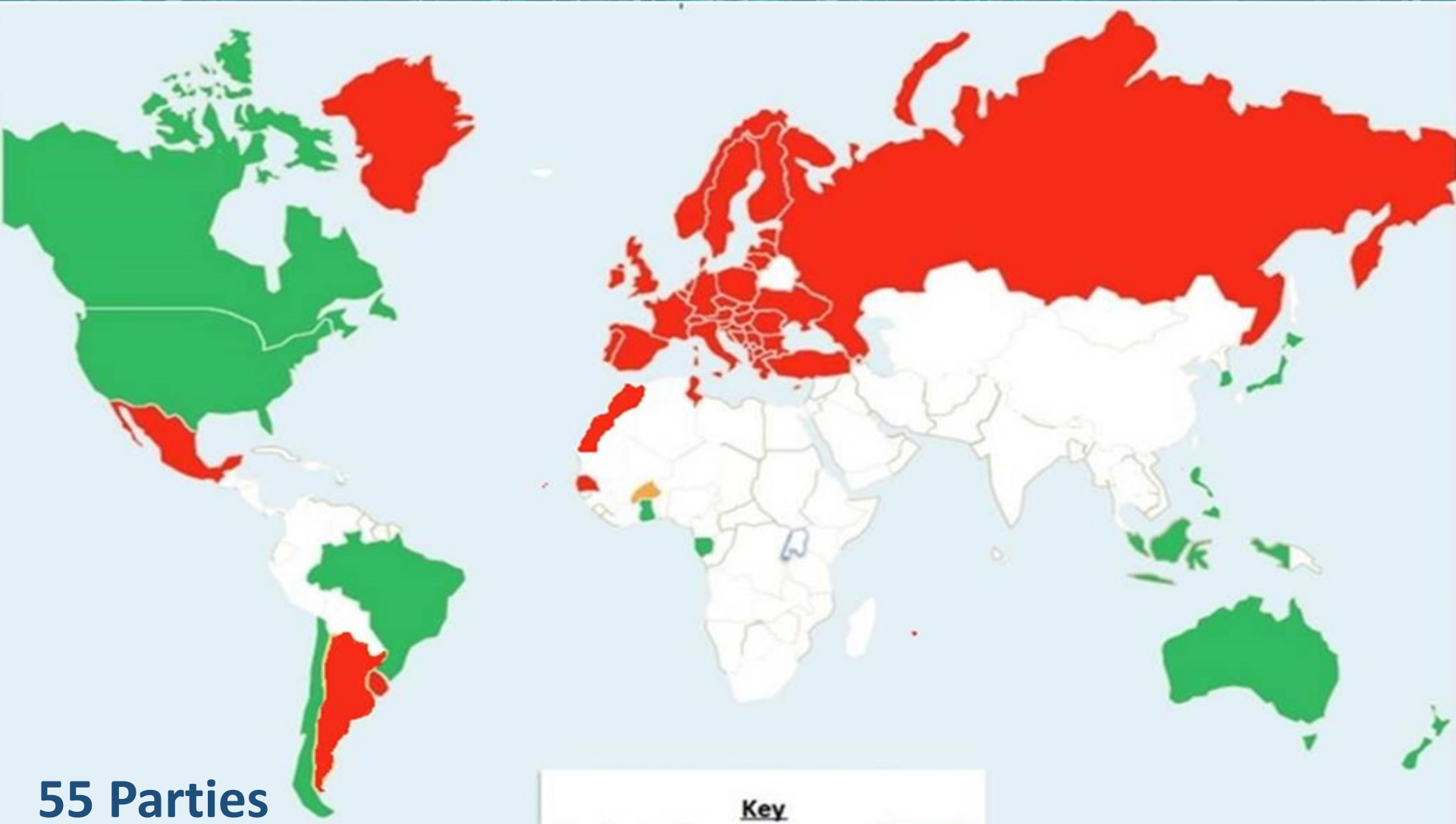
# Data Protection




## Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

- **The only legally binding multilateral instrument** on the protection of privacy and personal data
- **A source of inspiration** since 1981 for international and national privacy legislation

# Data Protection Convention




**55 Parties**

25+ Observers

# Data Protection Convention

## Convention 108 Committee

- 70 participating countries
- Set international standards in areas such as:
  - Artificial Intelligence
  - Big data
  - Health related Data
  - Media and privacy
  - Data processing by the police

# Data Protection Convention

## Convention 108

- 55 countries
- Outlaws processing of sensitive data on:
  - Race
  - Politics
  - Health
  - Religion
  - Sexual life
- Enshrines the individual's right to access and correct personal data

## Convention 108 +

(adopted on 18 May 2018)

- New rights for individuals related to big data and algorithms
- New obligations for data controllers on transparency and accountability
- Reinforced powers for Data Protection Authorities
- New monitoring mechanism
- Signed by 36 States and ratified by 5

# Data Protection Convention

## Global standard on privacy in the Digital Age

**Recommendation** by the UN special Rapporteur on the right to privacy to all UN Member States to accede to Convention 108+,

**Recognition** of an adequate level of data protection, consistent with the European Union GDPR and the Law Enforcement Directive.

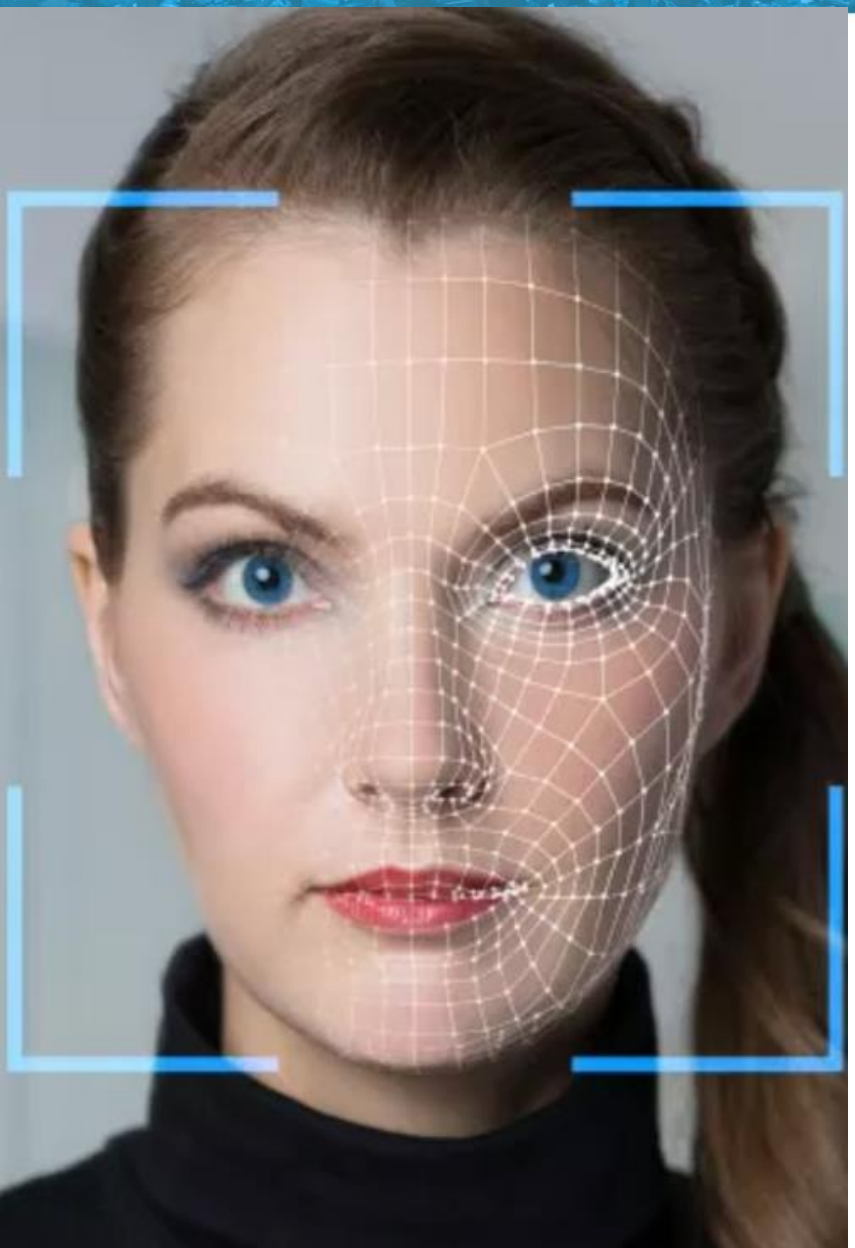
**Convergence** towards a set of high data protection standards.

# Data Protection Convention


## Potential advantages for Brazil

- **An appropriate level of protection for individuals in the Digital Age.**
- **A trigger for inclusive economic growth.**
- **Membership in an international network for mutual assistance and co-operation.**
- Brazil joined the Committee of Convention 108 in 2018 as an observer.

# Data Protection Convention



## Convention 108 Committee

**Current focus:**

- **facial recognition**
- **the educational sector**
- **digital identity programmes**
- **political campaigns and elections**

# Action against cybercrime

## Budapest Convention on Cybercrime

- **A framework for effective cooperation** with the necessary rule of law safeguards available to 65 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.

# Cybercrime convention

## Key features

- Criminalises offences against and by means of computers
- Provides powers to secure electronic evidence
- Creates a framework for effective international cooperation

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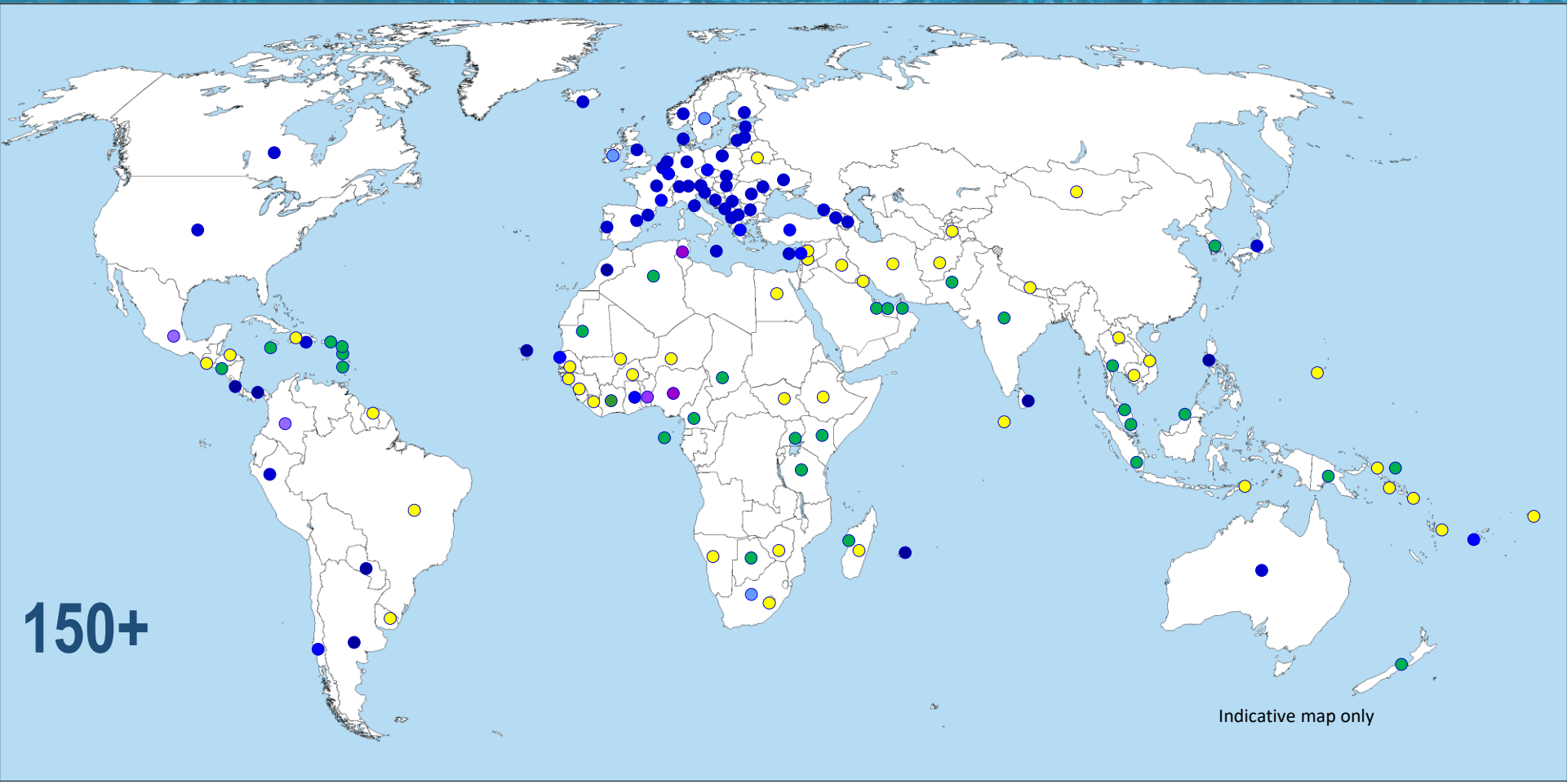
# Cybercrime convention




## Reach of the Budapest Convention

- Parties: 65
- Signed: 3
- Invited to accede: 8
- TOTAL: 76

- Other States with laws largely in line with Budapest Convention = 20+
- Further States drawing on Budapest Convention for legislation = 45+

# Cybercrime convention


## Advantages for Brazil

- **Brazil became Observer** to the Budapest Convention on Cybercrime in 2019 upon its request to accede to this Treaty.
- Once accession completed, **Brazil will be able to cooperate** on cybercrime and electronic evidence with the continuously growing network of other Parties.
- **Brazil may also become a priority country for capacity building** programmes implemented by the Cybercrime Programme Office of the Council of Europe.

# Action against cybercrime

## Cooperation framework

Cooperation between the criminal justice authorities of the 65 state parties to detect, investigate, attribute and prosecute cybercrime offences.

Capacity building for criminal justice authorities:

- OCTOPUS community platform offers webinars and access to specialized training material.

The 2nd Additional Protocol to the Budapest Convention that is currently under negotiations will be crucial to permit instant cooperation in urgent and emergency situations.

# Artificial intelligence

- ✓ Data processing and human rights
- ✓ **Use of AI by the Judiciary**
- ✓ Criminal law implications of AI
- ✓ **Bioethics and AI**
- ✓ Environment
- ✓ **Education**
- ✓ Gender equality
- ✓ **Youth and children**
- ✓ **Anti-discrimination**
- ✓ Culture
- ✓ **Elections**
- ✓ Media freedom
- ✓ **Action against cybercrime**

**Organisation-wide transversal topic**

# Artificial intelligence

## CAHAI

## Intergovernmental Ad Hoc Committee on Artificial Intelligence

**Mandate:** examine the feasibility and potential elements of a legal framework for the design, development and deployment of AI in line with Council of Europe standards of human rights, democracy and the rule of law.

**Meetings**:

- 18-20 November 2019
- 6-8 July 2020

# Artificial intelligence

## Feasibility study for a legal framework for Artificial Intelligence

- ✓ **Mapping of legally binding and non-binding legal frameworks on AI**
- ✓ **Identifying risks and opportunities** arising from the development, design and application of artificial intelligence (including human rights impact)
- ✓ **Detecting possible gaps**
- ✓ **Identifying applicable principles** to the design, development and application of AI.

# Cooperation with Companies

## Digital Partnership

- **The purpose of this collaboration** is to promote a shared commitment and cooperation between the parties and **to explore ways to respect the human rights and fundamental freedoms of Internet users** in accordance with Council of Europe Conventions and standards.

- **The parties agree** to share information, exchange views and best practices, develop co-operation and, where appropriate, partnerships in various fields.

- **Membership**: 21 technology firms and associations

# Cooperation with Companies


## Areas of common interest

- Internet governance
- Cybercrime
- Freedom of expression
- Data protection
- Children's rights
- Gender equality
- Combating terrorism
- Digital citizenship education
- Counterfeiting medical products
- Efficiency of justice
- Culture and Cultural Heritage
- Anti-Discrimination

## Thanks for your attention !

See also: Facebook Page
**Information Society Group**

## Thematic resources

www.coe.int/**freedomofexpression**

www.coe.int/**dataprotection**

www.coe.int/**cybercrime**

www.coe.int/**AI**

## COVID-19 dedicated pages

**Media in times of health crisis**

**COVID-19 Data Protection**

**Cybercrime and COVID-19**

**AI and control of Covid-19 coronavirus**

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# 47 MEMBER STATES
# 47 ÉTATS MEMBRES